REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARMEN COPPER CORPORATION, Petitioner,	**CTA CASE NO. 9659**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MANAHAN** (*Special Member*), *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: APR 20 2022 8:28 Am

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court are the following:

1. Petitioner's **Motion for Reconsideration** filed, through registered mail, on October 15, 2020 and received by the Court on October 26, 2020, with respondent's **Opposition** filed on November 20, 2020; and,

2. Petitioner's **Supplement to the Motion for Reconsideration (with Formal Offer of Evidence and Motion for Remarking of Exhibits)** filed on December 3, 2021, without respondent's comment as per Records Verification Report dated February 3, 2022.

To recall, in the Court's Decision dated September 10, 2020, petitioner's claim for refund of excess and unutilized input value-added tax (VAT) attributable to zero-rated or effectively zero-rated sales for the first (1^{st}) quarter of taxable year 2015 was denied in view of the fact that during the administrative level, respondent had already authorized the issuance of VAT credit/refund in an amount above and beyond the amount found by the Court as petitioner's valid excess zero-rated input VAT, the dispositive portion of which states as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

Undeterred, petitioner sought the reopening of the case to clarify why it is entitled to the amount in its judicial claim, ₱11,393,494.01. As such, petitioner moves that the court-commissioned independent certified public accountant (ICPA), Mr. Emmanuel Y. Mendoza, be recalled by the Court for the purpose of expounding his ICPA Report to prove that petitioner's export sales were indeed zero-rated.[1] Thus, in the Resolution dated February 16, 2021, the Court granted petitioner's plea and, as a consequence, held in abeyance the resolution of the present Motion for Reconsideration.

Upon completion of the ICPA's testimony, petitioner filed a *Supplement to the Motion for Reconsideration (with Formal Offer of Evidence and Motion for Remarking of Exhibits)* on December 3, 2021. Thereafter, the Court then submitted the case for resolution.[2]

Now, in its Motion for Reconsideration, petitioner claims that it was able to prove the existence of its zero-rated sales with sufficient documentary evidence based on the following arguments, *viz.*:

i. The export sales amounting to US$8,221,401.99 or Php368,318,809.16 covered by provisional invoice and other commercial documents are valid export sales, as verified by the ICPA;

ii. The export sales amounting to US$20,263,358.93 or Php899,422,691.13 can be traced in the inward remittances as clarified by the ICPA in his testimony;

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[1] Petitioner's *Motion for Reconsideration (with Motion for Leave of Court to Reopen the Case for the Recall of a Witness)* filed, through registered mail, on October 15, 2020 and received by the Court on October 26, 2020.
[2] *Order* dated November 22, 2021.

iii. *Coral Bay* case is not applicable to petitioner since said case applies to PEZA-registered enterprises and not to BOI-registered enterprises; hence, input taxes from local suppliers could be a subject of a tax refund;

iv. The input VAT from services rendered by non-resident amounting to Php162,640.21 was already approved by the BIR and was not an issue during trial;

v. The revised allocation made by the Court to taxable and exempt sales is no longer applicable as all zero-rated sales of petitioner are valid and its input taxes duly supported; and,

vi. For failure of respondent to give sufficient factual and legal reasons why a portion of the claim must be denied, the denial letter must be rendered invalid, and the claim for refund be deemed granted as a necessary consequence.

While in its Supplement to the Motion for Reconsideration, petitioner further explains that its customers do not pay on a per-invoice basis. It claims that the invoices could not be traced to the remittances because the foreign currency remittances received during taxable 2015 do not necessarily represent payments for invoices issued in 2015. Simply stated, invoices are not paid in the same period that they are issued.

Petitioner also asserts that for purposes of VAT zero-rating of export sale of goods, it is not necessary that the foreign remittances must actually correspond to the zero-rated sales for the same period because in sales of goods, the VAT, whether 12% or 0%, is determined at the time the invoice is issued, not when it is paid.

On the other hand, in his Opposition, respondent is primarily against only the re-opening of the case to recall the ICPA. He claims that the additional evidence sought to be presented by petitioner is not newly discovered nor were omitted through inadvertence or palpable mistake, neither will it be presented to correct evidence previously offered. In fact, the only purpose of which is to afford petitioner full opportunity to present its case. *jc*

Lastly, respondent insists that since tax refunds are construed strictly against the claimant as they partake the nature of an exemption from tax, it is therefore incumbent upon petitioner to prove its entitlement thereto and failure to do so is fatal to its claim. Considering that petitioner failed to discharge its burden of establishing its claim, respondent maintains that petitioner is not entitled to its claim for refund.

The Court finds both petitioner's Motion for Reconsideration and Supplement to the Motion for Reconsideration bereft of merit. Notably, the main arguments raised in petitioner's motion and supplement to the motion are mere reiterations of matters which have already been considered, weighed, and resolved by the Court in the assailed Decision.

The Court is not bound by the findings of the ICPA.

As to for its first argument, petitioner insists that the disallowed amount of US$8,221,401.99 or ₱368,318,809.16, duly covered by provisional invoice and other commercial documents, are valid export sales as verified by the ICPA.

However, the Court is not swayed.

Again, the ICPA report is only persuasive in nature and not conclusive upon the Court. The ICPA is commissioned merely to assist the Court in the determination of the merit of taxpayer's petition. With emphasis, the Court is not bound by the findings of the ICPA, as provided under Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), to wit:

> "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**

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> **conclusions subject to verification.**" *(Emphasis supplied)*

Based above, the ultimate determination of the merits or probative value of an ICPA report belongs exclusively to the Court as it is free to either adopt, in whole or in part, or even disregard the said findings and conclusions, after making its own verification and evaluation of the same and the evidence on record. Stated otherwise, petitioner cannot claim that the ICPA's findings are sufficient to validate its claims, since the Court ultimately determines whether the evidence presented duly support the alleged zero-rated sales.

In the assailed Decision, the Court elucidated that in order for an export sale to qualify as zero-rated, one of the essential elements discussed is that there was sale and actual shipment of goods from the Philippines to a foreign country. To prove this, the following documents must be presented by the VAT-registered claimant, *viz.*:

a) The sales invoice as proof of sale of goods; and,

b) Bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country.

The first type of document must comply with the pertinent invoicing requirements under Sections 113(A) and (B) of the National Internal Revenue Code (NIRC) of 1997, as amended, as implemented by Sections 4.113-1(A) and (B) of Revenue Regulations (RR) No. 16-05, as amended, and Section 237, in relation to Section 238, of the NIRC of 1997, as amended.

As examined by the Court, the provisional invoice *(Exhibit "P-18-28")* for the export sales in the amount of US$8,221,401.99 or ₱368,318,809.16, did not comply with the invoicing requirements enumerated above. To point out, said provisional invoice does not contain the required information stated under Sections 113(A) and (B) and 237, in relation to 238 of the NIRC of 1997, as amended.

As to the second type of document – on the proof of actual shipment, petitioner only presented a Holding Certificate *(Exhibit "P-18-29")* dated March 23, 2015 and Stock Inspection Report *(Exhibit "P-18-30")*, which if closely examined, does not prove the actual shipment of the goods. *jr*

Thus, for the said reasons, the export sales amounting to US$8,221,401.99 or ₱368,318,809.16 must still be disallowed.

The unmarked sales invoices mentioned by ICPA during his recall to trace the disallowed export sales amounting to US$20,263,358.93 or ₱899,422,691.13 falls squarely as forgotten evidence.

As for its second argument, petitioner points out that the ICPA already stated in the ICPA Report that the amount of sales reported in the 2nd Quarter of 2015 due to the final adjustment as to the actual amount of sales, as shown in the final invoice. Petitioner further claims that in the said ICPA Report, the adjustment on the invoices was on account of charges made by the customers, as well as bank charges. Petitioner then concludes that in computing the amount due for remittance, the Court should have considered these additional sales and charges.

The Court is not convinced.

Again, in the assailed Decision, the Court disallowed the export sales amounting to US$20,263,358.93 or ₱899,422,691.13 on the basis that it cannot be traced to the inward remittances per bank certification.

During the court hearing *via* video conferencing on November 22, 2021, the ICPA clarified that the disallowed export sales amounting to US$20,263,358.93 or ₱899,422,691.13 can be traced in the inward remittances. Based on his testimony, the disallowed inward remittances can be traced to the sales invoices which were not marked as they are outside the period of claim, to wit:

> "*Question No. 18.* *In the above explanation, you mentioned some invoices that appear to be not marked for exhibits. Could you explain why these were not marked as exhibits?*

> Answer: The sales invoices we marked as exhibits are those pertaining to the period covered by the claim. The sales invoices that we have reviewed that were outside the period of claim were not marked as exhibits since were already able to trace that the sales invoices Nos. 1810000004 to 1810000010 were paid for in foreign currency. I have attached copies of these invoices in this judicial affidavit for reference purposes.
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> We were satisfied based on existing accounting and auditing standards, that Petitioner's sales are being paid for in foreign currency. As we understand it, the sales of goods need not be fully paid before the same could be recognized in the VAT returns. We conducted the audit procedures in verifying these final invoices outside the period of claim for us to understand the context of the remittances and how they relate to the sales invoices issued within the period of claim."

Perforce, the fact that the ICPA was able to trace the disallowed export sales of US$20,263,358.93 or ₱899,422,691.13 to the unmarked sales invoices, it can therefore be surmised that such documents were existing and obtainable during trial. Considering their importance, said sales invoices, even if they are outside of the period of claim, should have been presented and offered in a seasonable manner, were it not for petitioner's sheer oversight. For the foregoing reasons, the Court sees that the presentation of the unmarked sales invoices falls squarely as forgotten evidence.

As held in the case of *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel,*[3] *to wit*:

> "*xxx* Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. **Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings**. A contrary

[3] G.R. No. 164460, June 27, 2006.

ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence." *(Emphasis supplied)*

It is an accepted tenet that rules of procedure must be faithfully followed except only when, for persuasive and weighting reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.[4] In this case, however, petitioner has not demonstrated any cogent reason for this Court to take exception.

Petitioner is not entitled to refund from its domestic purchases following the pronouncement made in the Coral Bay case.

In the assailed Decision, the Court disallowed the input taxes on domestic purchases of goods and services for the year covering the subject period of claim of petitioner. The Court reasoned that being a Board of Investment (BOI)-registered enterprise with 100% exports, petitioner should have no input VAT on said purchases as these are zero-rated. Thus, applying the case of *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue,*[5] *("Coral Bay case"* hereafter for brevity) the Court held that the proper party to seek the tax refund should be the suppliers and not petitioner.

However, as for its third argument, petitioner claims that the *Coral Bay case* should not be applied herein since it only applies to Philippine Economic Zone Authority (PEZA)-registered enterprises, and not to BOI-registered enterprises.

Unfortunately, petitioner is mistaken.

As discussed in the assailed Decision, Revenue Memorandum Order (RMO) No. 9-00,[6] provides that sales of goods, properties or services made by a VAT-registered supplier to a BOI registered entity

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[4] *Ma. Rosario Suarez v. Judge Martin S. Villarama, Jr., et al.,* G.R. No. 124512, June 27, 2006.

[5] G.R. No. 190506, June 13, 2016.

[6] "SUBJECT: Tax Treatment of Sales of Goods, Properties and Services Made by VAT-registered Suppliers to BOI-registered Manufacturers-Exporters With 100% Export Sales", dated February 2, 2000.

whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements, prescribed under Section 3 of the said RMO, to wit:

> "SECTION.3. *Sales of goods, properties or services made by a VAT registered supplier to a BOI registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No.7-95, subject to the following conditions:*
>
> (1) The supplier must be VAT-registered;
>
> (2) The BOI-registered buyer must likewise be VAT-registered;
>
> (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;
>
> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and,
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec.4.108-1(5) of Revenue Regulations No.7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer."

Under Section 3.4 of RMO 9-00, A BOI certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner. However, on the basis of said certification, no output tax should, therefore, be shifted by the local suppliers to petitioner. Thus, it follows that petitioner is not entitled to refund from the said domestic purchases.

As further illustrated in the case of *Coral Bay case,* the Supreme Court affirmed the ruling of the Court of Tax Appeals *En Banc* in stating that the refund-claimant's recourse is not against the government but against the seller who shifted the output VAT, thus:

> "As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, **if the petitioner had paid the input VAT, the CTA was correct in holding that the Petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT** following RMC No. 42-03, which provides:
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>> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
>>
>> In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.
>
> We should also take into consideration the nature of VAT as an indirect tax. **Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. <u>Hence, the proper party to seek the tax refund or credit</u>**

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should be the suppliers, not the Petitioner." *(Citations omitted; emphases and underscoring supplied)*

Applying the foregoing jurisprudence, no output tax should have been passed to the petitioner, bearing in mind that domestic goods and services purchased should be zero-rated pursuant to the BOI Certification. The proper party to seek the tax refund or credit is not petitioner, but its suppliers. In turn, petitioner's proper recourse is not against the Government but against the seller who has shifted to it the output VAT. Correspondingly, the claim for refund of input VAT on the domestic purchases of goods and services of petitioner, a BOI-registered entity, must be disallowed.

The Court may also rule upon related issues necessary to achieve an orderly disposition of the case, including the disallowed input VAT on services rendered by non-resident amounting to ₱162,640.21.

With regard to its fourth argument, petitioner points out that the Court erred in disallowing the input VAT from services rendered by non-resident amounting to ₱162,640.21, as the item was already approved by the BIR and was not an issue during trial.

The Court does not agree.

Verily, Section 1, Rule 14 of the 2005 RRCTA reads as follows:

"**RULE 14**
JUDGMENT, ITS ENTRY AND EXECUTION

SECTION 1. - *Rendition of judgment-* xxx

In deciding a case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case."

Based on the above provision, this Court is not bound by the issues specifically raised by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case.[7]

Also, cases filed before this Court are litigated *de novo*. For the Court to determine whether an administrative claim should have been granted in the first place, this entails a *review* of the very same documents which were submitted to the Bureau of Internal Revenue (BIR) in support of the said administrative claim. The Court cannot simply assume that the documents submitted before this Court are the very same documents presented at the administrative level. Further, no value is given to documentary evidence submitted in the BIR unless it is formally offered in this Court with a statement of the purpose why it is being offered.[8] The paramount consideration remains the ascertainment of truth.

In the present case, petitioner failed to submit the corresponding BIR Form No. 1600 that would have supported its claimed input VAT on services rendered by non-resident. Thus, for failing to do so, the input VAT of ₱162,640.21 was disallowed. It must be remembered that petitioner has the burden to prove every minute aspect of his claim.

The Court properly allocated the input tax to taxable, exempt, and zero-rated sales.

As to the fifth argument, petitioner avers that the revised allocation made by the Court to taxable and exempt sales is no longer applicable since all zero-rated sales of petitioner are valid and its input tax duly supported.

The Court is not convinced.

Pursuant to Section 112(A) of the NIRC of 1997, as amended, the input taxes claimed should be attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and

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[7] *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*, G.R. No. 183408, July 12, 2017.

[8] *Philippine Airlines, Inc. (PAL) v. Commissioner of Internal Revenue, et seq.*, G.R. Nos. 206079-80 and 206309, January 17, 2018; *See also* Section 34, Rule 132 of the Rules of Court.

the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.

As observed by the Court, for the subject period of claim, there exist zero-rated sales, exempt sales, and taxable sales subject to 12% VAT, based on the VAT Returns of the petitioner. Accordingly, the input tax was proportionally allocated and only ₱39,471,853.13 represented valid input tax attributable to total reported zero-rated sales.

Petitioner has the burden to prove its entitlement to the claimed refund.

Lastly, as to its fifth argument, petitioner claims that for failure of respondent to give sufficient factual and legal reasons why a portion of the claim must be denied, the denial letter must be rendered invalid, and the claim for refund be deemed granted as a necessary consequence.

The Court finds petitioner's argument misplaced.

It must be remembered that cases filed before this Court are litigated *de novo*, and that **party litigants must prove <u>every minute aspect</u> of their cases**.[9] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[10] Claims for tax refunds, when based on statutes granting tax exemption or tax refund, partake of the nature of an exemption; thus, the rule of strict interpretation against the taxpayer-claimant similarly applies.[11]

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[9] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, et seq.,* G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue v. Philippine National Bank,* G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.,* G.R. No. 197515, July 2, 2014; *Dizon v. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue v. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

[10] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.

[11] *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.,* G.R. No. 163835, July 7, 2010.

The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. This burden cannot be offset by the non-observance of procedural technicalities by the government's tax agents when the non-observance of the remedial measure addressing it does not in any manner prejudice the taxpayer's due process rights, as in the present case.[12]

Even if the Court were to consider respondent's act as a lapse in the observance of procedural rules, such lapse does not work to entitle petitioner to a tax refund when the established and uncontested facts have shown otherwise. Lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and especially when they are more consistent with upholding settled principles in taxation.[13]

That having been settled the Court shall now address petitioner's Supplement to the Motion for Reconsideration.

Petitioner assails the Court's ruling that the amount of sales the payment of which could not be traced should not be considered as zero-rated sales. It posits that under the VAT law and regulations, in case of sales of goods, the taxability of sales, be it taxable, zero-rated or exempt, is determined at the time of issuance of the invoice, and not on the payment of the purchase price. Petitioner also claims that the proper rule should be that as long as the export sales invoice is denominated in foreign currency, the same is sufficient for treating the sales as being paid for in foreign currency and, therefore, provides a basis for reporting the sale in the VAT return as zero-rated sales.

Unfortunately, the Court holds otherwise.

Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, provides for the requirements for export sales to be subjected to VAT zero-rating, to wit:

> "SEC. 106. *Value-Added Tax on Sale of Goods or Properties.* –

[12] *Ibid.*
[13] *Ibid.*

(A) *Rate and Base of Tax.* – x x x

(2) The following sales by VAT-registered persons shall be subject to zero percent (0%) rate:

(a) *Export Sales.* -The term **'export sales'** means:

(1) **The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**" *(Emphasis supplied)*

Based above, the requirements for export sales to be considered as zero-rated are as follows:

1. The sale was made by a VAT-registered person;

2. There was a sale and actual shipment of goods from the Philippines to a foreign country;

3. The sale was paid for in acceptable foreign currency or its equivalent to goods or service; and

4. The payment is accounted for in accordance with rules and regulations of the BSP.

To state simply, there must be an actual sale of goods with corresponding payment in foreign currency or its equivalent to goods or services for the export sales to be subject to VAT zero-rating. Failure to comply with the enumerated requirements, the sale of the goods shall not be considered as VAT zero-rating.

In the present case, petitioner failed to discharge the burden of proof on the portion of export sales that should be traced to both the invoice and inward remittance. Since it was not in compliance with the requisites under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the said portion of the export sales was properly disallowed by the Court.

With regard to petitioner's claim that the export sales invoice denominated in foreign currency is sufficient for treating the sales as being paid for in foreign currency, the Court finds the same untenable.

Corollary, a VAT zero-rated invoice is petitioner's proof of sale of goods for the period[14] and the corresponding bank certification of inward remittances may attest to the fact of payment in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules and regulations,[15] regardless of the date when the same was remitted. The mere submission of these documents only will not suffice, as it is equally important that the claimed export sales be traced to the corresponding foreign currency inward remittances shown therein.

As observed by the Court, petitioner was able to prove the sale of goods when it submitted the invoices. However, as a certain portion of such sales cannot be traced to the inward remittances as per bank certification, petitioner failed to prove the actual payment in foreign currency on such sale. Hence, for failure to satisfy one of the requirements, the said portion was disallowed by the Court.

On a final note, consistent is the rule that actions for tax refund or credit, as in the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[16]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motion and

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[14] Section 113(A)(1) of the NIRC; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007.

[15] Section 106(A)(2)(1)(a) of the NIRC; *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166732, April 27, 2007.

[16] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222428, February 19, 2018.

Supplement to the Motion, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on September 10, 2020.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration and Supplement to the Motion for Reconsideration are both **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

Catherine T. Manahan
(With due respect, I register my Concurring and Dissenting Opinion.)
CATHERINE T. MANAHAN
Associate Justice/ Special Member

(I concur in the result.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARMEN COPPER CORPORATION, *Petitioner,*	**CTA Case No. 9659**
	Present:
-versus-	**CASTAÑEDA, JR.,** Chairperson, **MANAHAN,** (Special Member), and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 20 2022 8:28 AM

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CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I concur with the findings of the ponente that a portion of the export sales of petitioner should be disallowed because such cannot be traced to the inward remittances per bank certifications and that this Court is not bound by the findings of the Independent Certified Public Accountant (ICPA)

But, with due respect, I register my dissent to the view that petitioner is not entitled to that portion of the refund attributable to its domestic purchases because the proper recourse of the claimant is not against the government but against the seller/s who shifted the output VAT.

Jurisprudence has made it clear that the evidentiary standards for claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales are as follows:

1. That the taxpayer is VAT-registered;
2. That the claim for refund was filed within the prescriptive period;
3. That there must be zero-rated or effectively zero-rated sales;
4. That input taxes were incurred or paid; cmn

5. That such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. That the input taxes were not applied against any output VAT liability.

The Court, in my humble opinion, must resolve the issue solely on the basis of whether or not the taxpayer complied with the foregoing evidentiary standards instead of directing the taxpayer-claimant to seek a refund from its sellers/suppliers. If the VAT zero-rated suppliers charged input VAT on their sales, despite the fact that they were imposed a zero-rate and thus no tax burden is assumed, the erroneous shifting of the tax burden can be proven by factual evidence, i.e., VAT invoices or official receipts.

If records would show that output and input taxes were paid by the local supplier/s and petitioner, respectively, I believe that recourse against the government by way of a claim for refund, is more legally sound than directing the claimant to seek redress from its suppliers. The fact remains that said input taxes were passed on to petitioner by its suppliers, that they were already remitted to the government as output VAT, thus, if under the law, such sales are VAT zero-rated, then, there was clearly an erroneous collection of output tax on the part of the state. Although, statutorily, the supplier is the taxpayer of the output VAT, there is no compelling reason on its part to claim for the refund because the burden of the tax, i.e., input tax, was assumed by the buyer. In the case of *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) vs. CIR,*[1] the Supreme Court described the relationship between output tax and input tax under the VAT system and we quote:

> "The VAT is a tax on consumption, an indirect tax that the provider of goods or services may pass on to his customers. **Under the VAT method of taxation, which is invoice-based**, an entity can subtract from the VAT charged on its sales or outputs the VAT it paid on its purchases, inputs and imports. For example, when a seller charges VAT on its sale, it issues an invoice to the buyer, indicating the amount of VAT he charged. For his part, if the buyer is also a seller subjected to the payment of VAT on his sales, he can use the invoice issued to him by his supplier to get a reduction of his own VAT liability. **The difference in tax shown on invoices passed and invoices received is the tax paid to the government. In**

[1] G.R. No. 178090, February 8, 2010. am

> **case, the tax on invoices received exceeds that on invoices passed, a tax refund may be claimed."** (emphases supplied)

Given the nature of the VAT refund system, as long as the claimant can prove by invoices (for sale of goods) and receipts (for sale of services) the input VAT passed on to him by suppliers, he may be entitled to claim a refund of the input tax. To direct the taxpayer to go after its suppliers who have already passed on the VAT is not only without legal basis but is violative of the principle of fair play.

WHEREFORE, premises considered, I remain consistent with the above position and I have maintained my dissent in various cases which directed the taxpayer-claimants to seek recourse from its suppliers instead of the government.[2]

CATHERINE T. MANAHAN
Associate Justice

[2] See my Concurring and Dissenting Opinions in *Hedcor, Inc. vs. CIR,* CTA *EB* No. 1913, June 20, 2020; *CBK Power Company Limited vs. CIR,* CTA *EB* No. 1685, February 20, 2019; *Hinatuan Mining, Inc. vs. CIR,* CTA Case No. 9092, November 3, 2017.