REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CRESCENT PARK 6-24 PROPERTY HOLDINGS, INC.,
Respondent.

CTA EB NO. 1230
(CTA Case No. 8202)

Present:

Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, ***and***
Manahan, *JJ.*

Promulgated:

APR 25 2017 11:20 a.m.

x- -x

RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution is respondent's "Motion for Reconsideration" of the Decision promulgated on August 11, 2016, without petitioner's Comment.

Respondent seeks reconsideration of this Court's Decision, the dispositive portion of which reads as follows:

> "**WHEREFORE**, the Petition for Review is **PARTIALLY GRANTED**. The Court has jurisdiction over the

instant case. However, Crescent Park 6-24 Property Holdings, Inc.'s petition for refund is denied. Accordingly, the Amended Decision dated June 18, 2014 and Resolution dated September 10, 2014 are reversed.

SO ORDERED."

Respondent maintains that the Special First Division of the Court resolved that respondent is indeed engaged in zero-rated sales; that in the enumeration of the requisites of a valid claim for refund or issuance of tax credit certificate, there is no mention of any requirement that invoices or receipts submitted to substantiate zero-rated sales in claims for refund or issuance of tax credit certificate must be with an Authority to Print (ATP) for the period of claim; and what the law requires is that a taxpayer must issue a duly issued registered invoice/official receipt that is preceded by an ATP, but it does not prohibit the issuance of an official receipt to cover transactions that transpired prior to the date of the ATP.

After careful evaluation of respondent's arguments, this Court finds no merit in the instant Motion for Reconsideration.

In the Assailed Decision,[1] this Court unanimously ruled in this wise:

> "While it is true that printing the ATP on the invoices or receipts is not required since there is no law, rule or regulation requiring it, however, it is imperative that at the time the sales transactions were made, the receipts issued evidencing the zero-rated sales transactions must be duly registered official receipts.
>
> To be entitled to refund or tax credit certificate, petitioner must comply with all the requisites for a VAT refund/tax credit of input tax paid attributable to zero-rated sales under Section 112 (A) of the NIRC of 1997, as amended, to wit:
>
> 1) that there must be zero-rated or effectively zero-rated sales;
> 2) that input taxes were incurred or paid;
> 3) that such input taxes are attributable to zero-rated or effectively zero-rated sales;
> 4) that the input taxes were not applied against any output VAT liability; and

---

[1] *Rollo*, pp. 127 to 139.

5) that the claim for refund was filed within the two-year prescriptive period.

To prove that the sales transactions are zero-rated for purposes of refund or tax credit, the taxpayer must prove compliance with the substantiation requirements provided in Section 113(A) in relation to Sections 237 and 238 of the NIRC, as amended.

xxx xxx xxx

An examination of Exhibits "GG-1" to "GG-12" reveals that there were no duly registered official receipts at the time the zero rated sales transactions were made because the ATP appearing on the receipts were secured in "4/5/2011" or April 5, 2011. It appears that the subject transactions occurred long before Crescent was able to secure from the BIR an authority to print the subject receipts. Hence, the issuance of the subject receipts is an afterthought of the transactions made in 2009.

xxx xxx xxx

In the case of *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc) vs. CIR,*[2] the Supreme Court ruled that:

xxx xxx xxx

ATP must be secured from the BIR

But while there is no law requiring the ATP to be printed on the invoices or receipt, Section 238 of the NIRC expressly requires persons engaged in business to secure an ATP from the BIR prior to printing invoices or receipts, Failure to do so makes the person liable under Section 264 of the NIRC.

`This brings us to the question of whether a claimant for unutilized input VAT on zero-rated sales is required to present proof that it has secured an ATP from the BIR prior to the printing of its invoices or receipts.

We rule in the affirmative.

[2] G.R. No. 172378, January 17, 2011.

> Under Section 112 (A) of the NIRC, a claimant must be engaged in sales which are zero-rated or effectively zero-rated. To prove this, duly registered invoices or receipts evidencing zero-rated sales must be presented. However, since the ATP is not indicated in the invoices or receipts, the only way to verify whether the invoices or receipts are duly registered is by requiring the claimant to present its ATP from the BIR. Without this proof, the invoices or receipts would have no probative value for the purpose of refund. In the case of Intel, we emphasized that:
>
> 'It bears reiterating that while the pertinent provisions of the Tax Code and the rules and regulations implementing them require entities engaged in business to secure a BIR authority to print invoices or receipts and to issue duly registered invoices or receipts, it is not specifically required that the BIR authority to print be reflected or indicated therein. Indeed, what is important is that it has been secured or obtained by the taxpayer, and that invoices or receipts are duly registered."

Hence, the absence of BIR's ATP at the time of sales transactions in 2009, is fatal to Crescent's claim for refund. It is tantamount to non-compliance with the mandatory invoicing requirements on documents supporting the sale of goods and services.

In fine, this Court sees no cogent reason to deviate from the previous ruling that Crescent was not able to satisfy the legal requirements for its entitlement to refund or issuance of tax credit certificate.

In *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[3], the Supreme Court emphasized that in all motions for reconsideration, the burden is upon the movant, respondent herein, to show that there are compelling reasons to reconsider the decision of the Court. However, respondent did not satisfy this burden.

WHEREFORE, premises considered, the "Motion for Reconsideration" is hereby **DENIED for lack of merit.**

SO ORDERED.

Ma. Belen S L

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

---

[3] *Marcos vs. Manglapuz,* G.R. No. 88211, October 27, 1989.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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