REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus – **PILIPINAS KYOHRITSU INC.,** Respondent.	**CTA EB NO. 2382** (CTA Case No. 9706)

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PILIPINAS KYOHRITSU INC., Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**CTA EB NO. 2395** (CTA Case No. 9706) Present: **DEL ROSARIO,** *P.J.,* **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** **REYES-FAJARDO,** *and* **CUI-DAVID,** *JJ.* Promulgated: FEB 22 2022 3:40pm

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court are the following:

1) Petition for Review[1] filed by the Commissioner of Internal Revenue ("CIR"), docketed as CTA EB No. 2382, praying that the Decision[2] dated June 30, 2020 ("Assailed Decision") and Resolution[3] dated November 20, 2020 ("Assailed Resolution") promulgated by the Court of Tax Appeals Second Division ("Second Division") be reversed and set aside, and another one be rendered denying the entire claim for refund; and

2) Petition for Review[4] filed by Pilipinas Kyohritsu Inc. ("PKI"), docketed as CTA EB No. 2395, praying for the following:

   a. Reversal of the Assailed Resolution;

   b. Partial reversal of the Assailed Decision; and

   c. Promulgation of a new decision ordering the refund or issuance of tax credit certificate in favor of PKI in the amount of Php23,175,145.79.

The Parties

The CIR is the duly appointed commissioner of the Bureau of Internal Revenue ("BIR") and is empowered to perform the duties of his office, including the power to grant or deny tax refunds pursuant to Section 112(c) of the Tax Code, as amended, by Republic Act (R.A.) No. 8424, otherwise known as the "Tax Reform Act of 1997", with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.[5]

On the other hand, PKI is a duly registered taxpayer in the BIR under Certificate of Registration Nos. OCN8R0000044554 and OCN8RC0000906901E. It is also a registered entity in the Board of Investments (BOI).[6]

The Facts

The facts as found by the Second Division are as follows:

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1 Rollo (CTA EB No. 2382), pp. 1-11.
2 Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Jean Marie A. Bacorro-Villena concurring. Docket, pp. 955-1005.
3 *Id.*, pp. 1067-1075.
4 Rollo (CTA EB No. 2395), pp. 11-46.
5 *Id.*, Decision dated June 30, 2020, The Parties, p. 956.
6 *Id.*

"For FY ending March 31, 2016, [PKI] submitted the following:

Period	Monthly VAT Declaration/VAT Returns	Date of filing
April 2015	Monthly VAT Declaration	May 22, 2015
May 2015	Monthly VAT Declaration	June 23, 2015
1st Quarter — FY 2016 (April 1, 2015 to June 30, 2015)	Quarterly VAT Return	July 23, 2015
1st Quarter — FY 2016 (April 1, 2015 to June 30, 2015)	Amended Quarterly VAT Return	February 18, 2017
July 2015	Monthly VAT Declaration	August 21, 2015
August 2015	Monthly VAT Declaration	September 23, 2015
2nd Quarter — FY 2016 (July 1, 2015 to September 30, 2015)	Quarterly VAT Return	October 22, 2015
2nd Quarter — FY 2016 (July 1, 2015 to September 30, 2015)	Amended Quarterly VAT Return	February 18, 2017

On June 16, 2017, [PKI] filed an administrative claim for refund covering the period of 1st and 2nd quarters of FY ending March 31, 2016. In support to the said claim, [PKI] submitted complete documents.

Due to inaction of [the CIR], [PKI] filed the present Petition for Review on October 30, 2017. The present case was initially raffled to this Court's First Division.

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On September 21, 2018, the present case was transferred to this Court's Second Division."[7]

The Ruling of the Second Division

On June 30, 2020, the Second Division promulgated the Assailed Decision partially granting the Petition for Review, to wit:

"**WHEREFORE**, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, [the CIR] is **ORDERED** to refund or issue tax credit certificate in favor of [PKI] the amount of **[Php]23,534.47** representing the latter's unutilized input VAT attributable to its zero-rated sales for the

[7] *Id.*, Decision dated June 30, 2020, The Facts, pp. 956-967.

period April to June 2015 (1st quarter) and July to September 2015 (2nd quarter) of FY ending March 31, 2016.

SO ORDERED."

On July 22, 2020, PKI filed a "Motion for Reconsideration"[8] while the CIR filed a "Motion for Partial Reconsideration (Re: Decision promulgated 30 June 2020)"[9] on the next day July 23, 2020. Both were denied by the Second Division in the Assailed Resolution for lack of merit, to wit:

> "**WHEREFORE**, premises considered, [PKI's] Motion for Reconsideration and [the CIR's] Motion for Partial Reconsideration (Re: Decision promulgated 30 June 2020) are both **DENIED** for lack of merit.
>
> **SO ORDERED.**"[10]

The Proceedings in the Court of Tax Appeals En Banc

On December 02, 2020, the CIR filed his "Petition for Review"[11], docketed as CTA EB No. 2382.

On January 12, 2021, PKI was ordered in a Resolution[12] to comment on the CIR's petition within ten (10) days from receipt.

On the other hand, PKI filed a "Motion for Extension To File Petition For Review"[13] on December 18, 2020, docketed as CTA EB No. 2395, praying for an additional fifteen (15) days or until January 09, 2021 within which to file the petition for review. The Court granted the same in a Minute Resolution[14] dated December 21, 2020. On January 08, 2021, PKI filed its "Petition for Review"[15].

On January 14, 2021, a Minute Resolution[16] was issued consolidating CTA EB No. 2395 with CTA EB No. 2382. Thereafter, on January 26, 2021,

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8 *Id.,* pp. 1006-1022.
9 *Id.,* pp. 1023-1033.
10 *Id.*, p. 1075.
11 Rollo (CTA EB No. 2382), pp. 1-11. Record shows that the CIR received the Assailed Resolution on November 25, 2020; Docket, p. 1066.
12 *Id.*, pp. 80-81.
13 Rollo (CTA EB No. 2395), pp. 1-38 Record shows that the PKI received the Assailed Resolution on December 10, 2020; Docket, p. 1066.
14 *Id.*, p. 10.
15 *Id.*, pp. 11-47.
16 Rollo (CTA EB No. 2382), p. 82.

the Court issued a Resolution[17] ordering the CIR to file his comment to PKI's Petition for Review within five (5) days from notice.

On February 08, 2020, the CIR filed its "Comment (Re: Petition for Review)"[18]. Meanwhile, PKI filed its "Comment/Opposition (To Petition for Review dated 02 December 2020)"[19] on February 19, 2021.

On March 03, 2021, a Resolution[20] was issued submitting the instant cases for decision.

Assignment of Errors

The CIR assigned a single error in its "Petition for Review" in CTA EB No. 2382:

> "The Second Division xxx erred in ruling that [PKI] is entitled to refund in the reduced amount of [Php]23,534.47 representing unutilized input VAT allegedly attributable to zero-rated sales.[21]

Conversely, PKI raised the following issues in CTA EB No. 2395:

1) Whether or not PKI complied with the third requisite of Revenue Regulations (RR) No. 16-2005 and Section 106(A)(2)(a)(1) of the National Internal Revenue Code ("NIRC") of 1997, as amended, and whether offsetting is categorically and clearly allowed by law; and

2) Whether or not PKI substantially complied with all invoicing and substantiation requirements under Sections 113 and 237 of the NIRC of 1997, as amended.[22]

The Arguments of Parties

The CIR's arguments:

The CIR maintains that to be creditable, the input VAT must come from purchases of goods that form part of the finished product of the taxpayer, or it

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17 *Id.*, pp. 84-85.
18 *Id.*, pp. 86-91.
19 *Id.*, pp. 99-119.
20 *Id.*, pp. 121-122.
21 *Id.*, Petition for Review dated December 02, 2020, p. 3.
22 Rollo (CTA EB No. 2395), Petition for Review dated January 07, 2021, p. 21.

must be directly used in the chain of production. After determining which input taxes are creditable, the law requires a second evaluation to determine which creditable input VAT are attributable, that is, the connection between the purchases and the finished product is concrete and not imaginary or remote. In the instant case, the decision of the court *a quo* did not show direct attributability of the purchases or input VAT to the finished product whose sale is zero-rated. In support thereof, the CIR invokes the ruling in the case of *Commissioner of Internal Revenue v. Coral Bay Nickel Corporation and Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[23] ("*CIR v. Coral Bay*").

Additionally, the CIR contends that PKI fell short of proving the veracity of its claim for refund.

PKI's arguments:

PKI avers that an examination of the evidence on record would lead to the conclusion that it can be ascertained that the foreign currency remittances actually pertain to the payments for the zero-rated export sales of goods during the 1st and 2nd quarters of the fiscal year ("FY") ending March 31, 2016. Petitioner claims that the Independent Certified Public Accountant ("ICPA") Report shows that the amounts of remittances from Sumitomo Wiring Systems, Ltd. ("SWS-Japan") and Sumitomo Electric Wiring Systems, Inc. ("SEWS-USA") were the subject of an offsetting arrangement between PKI and SWS-Japan based on an examination of supporting documents.

Additionally, PKI asserts that Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, allows for offsetting between parties to VAT zero-rated export sales. Accordingly, Petitioner's export sales to SWS-Japan and SEWS-USA qualify as VAT zero-rated export sales for they were paid for in goods equivalent to the acceptable foreign currency.

PKI alleges likewise that the documents it presented are sufficient to demonstrate the export nature of Petitioner's sales to SWS-Japan and SEWS-USA.

Lastly, PKI submits that details or information on receipts or invoices do not have to be machine-printed only, and that handwriting details or information on computerized invoices or receipt transpire out of practical necessity.

<u>The Ruling of the Court</u>

Timeliness of Petitions

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[23] CTA EB Nos. 1735 and 1737 (CTA Case No. 8905), July 18, 2019.

The Court in Division issued the Assailed Resolution, denying the CIR's "Motion for Partial Reconsideration (Re: Decision promulgated 30 June 2020)" and PKI's "Motion for Reconsideration", on November 20, 2020. The CIR received said Resolution on November 25, 2020 whereas PKI received it on December 10, 2020. Pursuant to Rule 4, Section 2(a)(1)[24] in relation to Rule 8, Section 3(b)[25] of the Revised Rules of the Court of Tax Appeals[26] ("RRCTA"), the CIR and PKI had fifteen (15) days from date of receipt of the resolution or until December 10, 2020 and December 25, 2020, respectively, within which to file their petitions for review.

On December 02, 2020, the CIR timely filed its "Petition for Review". Meanwhile, PKI filed a "Motion for Extension To File Petition For Review"[27] on December 18, 2020, praying for an extension of fifteen (15) days to file. The Court granted the same in a Minute Resolution dated December 21, 2020. On January 08, 2021, the PKI timely filed its "Petition for Review".

Hence, the Court *En Banc* validly acquired jurisdiction over the two (2) petitions.

We now proceed to the merits of the case.

At the outset, it must be emphasized that the issues raised by PKI and the CIR in their petitions are mere reiterations of the same issues which had already been duly considered, passed upon and resolved by the Second Division in the Assailed Decision and Assailed Resolution.

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[24] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[25] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[26] A.M. No. 05-11-07-CTA, November 22, 2005.

[27] Rollo (CTA EB No. 2180), pp. 1-3. Record shows that the Rio Tuba Corp. received the Assailed Resolution on October 29, 2019; Docket, p. 1347.

CTA EB No. 2382

The Second Division did not err in partially granting PKI's claim for refund

We do not subscribe to the CIR's argument that there should be direct attributability of the purchases or input VAT to the finished product whose sale is zero-rated.

Section 112(A) of the NIRC of 1997, as amended, allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales, *viz.*:

> "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, <u>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</u>: 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."[28]

Contrary to the CIR'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 VAT of PKI amounting to Php23,534.47is attributable to its valid zero-rated sales based on the evidence presented by it. The law does not require that the input tax be directly attributable to PKI's zero-rated sales. Input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfies the

[28] *Emphasis and underscoring supplied.*

requirement of the law. *Ubi lex non distinguit nec nos distinguere debemos.*[29] It is a well-recognized rule that where the law does not distinguish, courts should not distinguish.

Furthermore, the CIR's reliance in *CIR v. Coral Bay* is inaccurate as the doctrinal pronouncement therein does not run counter to the Second Division's ruling in the Assailed Decision and Assailed Resolution.

In *CIR v. Coral Bay*, the input taxes that were incurred **were not related** to Coral Bay's zero-rated sales, to wit:

> "The records of this case and as adjudged by the Court in Division, show that the sets of input VAT were incurred on Coral Bay's purchases of goods and services which were consumed and rendered outside the PEZA zone and within the customs territory. Further, the Court in Division acknowledged that such purchases were used to construct the row house and dormitory for Coral Bay's laborers as well as the foreman's duplex and airport runway, all located outside of the PEZA zone.
>
> One important requisite for a claim for refund of excess or unutilized input VAT under the aforequoted Section 112 (A) is that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales.
>
> xxx xxx xxx
>
> However, it is also clear that the input taxes that were incurred were used for transactions or activities that are not related to its nature as a zero-rated taxpayer.
>
> One of the incentives granted by law is that any unutilized or excess input VAT may be refunded to VAT zero-rated taxpayer provided that these are attributable or used in the manufacture or exportation of its zero-rated sales which in the case of Coral Bay is the exportation of nickel cobalt and mixed sulfide to Sumitomo Metal Mining Co., Ltd. located in Japan...."

However, nothing in the said decision states or implies that only those directly attributable to Coral Bay's zero-rated sales are allowed as valid input VAT.

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[29] Philippine Free Press, Inc. v. Court of Appeals (12th Division), et al., G.R. No. 132864, October 24, 2005.

As to the CIR's argument that PKI's claim for refund has no basis in fact and in law, suffice it to say that We find the court *a quo*'s conclusions and computations on the matter in order.

From the foregoing, the CIR's assertions are devoid of merit.

CTA EB No. 2395

The Second Division properly ruled that the actual export sales of goods amounting to Php3,743,326,205.87 do not qualify for VAT zero-rating

PKI asserts that it has sufficiently substantiated its VAT zero-rated export sales to SWS-Japan and SEWS-USA for the 1st and 2nd quarter of the FY ending March 31, 2016.

We disagree.

The alleged export sales of service made to SWS-Japan was excluded by the Second Division for failure by PKI to prove that the former is a non-resident foreign corporation doing business outside the Philippines.

This Court has consistently held that in order to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, **at the very least, by both** Securities and Exchange Commission ("SEC") certificate of non-registration of corporation/partnership **and** proof of foreign incorporation/association/business registration.

The said basic documents are necessary because the Philippine SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines, while the certificate/articles of incorporation/association will prove that the recipient of the service is indeed foreign. Furthermore, the former document will tend to satisfy the requirement that the service-recipient is not engaged in trade or business within the Philippines, while the latter document will indicate whether the same service-recipient is engaged in business at all (*i.e.*, a showing of a continuity of conduct and intention to establish a continuous business). In this connection, it must be remembered that Section 108(B)(2)[30] of the NIRC of 1997, as amended,

[30] SEC. 108. Value-Added Tax on Sale of Services and Use or Lease of Properties. —
xxx xxx xxx
(B) Transactions Subject to Zero Percent (0%) Rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

requires, *inter alia*, that the service-recipient is "a person engaged in business conducted outside the Philippines" for the transaction to be treated as subject to the zero percent (0%) VAT rate.

In the case at bar, PKI presented a Certification of Non-Registration of Company[31] dated April 05, 2018 issued by the SEC to the effect that the records of the latter do not show the registration of SWS-Japan as either a corporation or a partnership. However, no other documentary proof was offered in evidence regarding SWS-Japan's incorporation/association/business registration.

As for the alleged export sales of service made to SEWS-USA, PKI avers that it paid for the export sales through offsetting, and that export sales under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, could be paid either by way of inward remittance and/or in kind.

A perusal of the ICPA Report however reveals that only SWS-Japan had offsetting transactions with PKI, and that SEWS-USA was not part of the offsetting arrangement.

More importantly, assuming *arguendo* that the ICPA Report disclosed that there were offsetting transactions between PKI and SEWS-USA, the Court *En Banc* is not bound by the findings of the ICPA especially when the same is unsubstantiated.

We concur with the Second Division's ruling that basic is the rule that mere allegation is not evidence and is not equivalent to proof, and that whoever alleges a fact has the burden of proving it.

Moreover, the ICPA Report is a mere tool or guide to aid the Court in the resolution of the case, hence, the determination of the merit or the probative value of such Report is still within the province of the Court's discretion. The Court is free to adopt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.

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(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

31 ICPA Exhibit "P-34".

The Second Division properly disallowed the receipts/ invoices with handwritten details/information

To reiterate, PKI avers that there is nothing in the NIRC of 1997, as amended, that states that handwritten details/information on receipts/invoices would make the said receipts/invoices not in compliance with the requirements.

We agree. Nonetheless, as pointed out by the Second Division, doubt exists as to the veracity of the details on the computerized receipts/invoices which were inserted manually by writing. Hence, the Second Division decided to adopt the findings of the ICPA and disallowed those receipts/invoices, to wit:

> "However, doubt as to the compliance with the substantiation of invoicing requirements arises due to the nature how the handwritten details/information was made in the receipts/invoices in the amount of [Php]10,005,035.14...
>
> xxx xxx xxx
>
> Again, handwritten details/information inserted in the receipts/invoices must only be made by authorized signatories. In the ICPA Report, handwritten TIN and/or address were inserted in loose-leaf or computerized accounting invoice/receipt. Considering that the invoice/receipt is already computerized, any subsequent insertion therein would raise a doubt as to the completeness of the said invoice/receipt, as well as to loose-leaf invoice/receipt. The same goes with invoice/receipt with mixed handwritten and printed details in documents not identified as either with loose-leaf or CAS permit, and different handwriting of details in documents with signature — only authorized signatories should insert details/information in the invoice/receipt."

All in all, We find no sufficient basis for PKI's Petition for Review.

WHEREFORE, premises considered, the Court **DENIES** the instant Petitions for Review for lack of merit. The Decision dated June 30, 2020 and Resolution dated November 20, 2020 of the Second Division in CTA Case No. 9706 are **AFFIRMED**.

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SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice