REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

CARMEN COPPER CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE No. 10016

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:
MAY 17 2021
4:50 p.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are:

1. Respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Motion for Partial Reconsideration (Re: Decision promulgated on 28 October 2020)"[1] (**MPR**), filed on 10 November 2020, with petitioner's "Comment (To Respondent's Motion for Partial Reconsideration)"[2], filed on 20 January 2021; and,

2. Petitioner Carmen Copper Corporation's (**petitioner**'s/**CCC**'s) "Motion for Reconsideration (with Motion for Leave of Court to Reopen the Case for the Recall of a Witness)"[3] (**MR**), filed on 18 November 2020, with respondent's "Opposition (Re: Motion for Reconsideration with Motion for Leave of Court to

[1] Division Docket, pp. 383-396.
[2] Id., pp. 438-443.
[3] Id., pp. 397-417.

Reopen the Case for the Recall of a Witness)"[4], filed on 14 December 2020.

In support of his MPR, respondent ascribes error to the Court in ruling that petitioner is entitled to refund in the reduced amount of ₱10,585,608.98, representing unutilized excess input value-added tax (**VAT**) allegedly attributable to zero-rated sales for the third quarter of taxable year (**TY**) 2016. According to him, only creditable input taxes that are directly attributable may be refunded. In petitioner's case, however, no attributability was allegedly established between the input tax on purchases vis-à-vis zero-rated sales.

Moreover, considering that respondent issued a Decision at the administrative level, the Court's jurisdiction becomes strictly appellate in nature. Respondent argues that the Court should have confined itself to determining whether his findings are consistent with law. Petitioner cannot submit documents it did not submit at the administrative level. The Court's resolution of the case should have been limited to the issue of whether the denial was proper (given the evidence submitted at the administrative level).

Petitioner, in its Comment, assails respondent's MPR as repetitious of arguments that the Court consistently has rejected. It submits that respondent's MPR failed to grasp the concept of "creditability" under the VAT law. According to petitioner, a "creditable" input tax, as the name implies, already passed the test of creditability, which is the direct and indirect relationship of the input taxes to the vatable activities of the taxpayer. Also, contrary to respondent's assertion, the National Internal Revenue Code (**NIRC**) of 1997, as amended, did not require that only those "directly attributable" could be creditable and become a subject of a claim for refund.

Petitioner adds that, in any event, the Court's decision was not hinged on the issue of whether petitioner's input taxes that were granted were directly attributable to its zero-rated sales. It states that respondent never raised the issue of direct attribution during trial or in the administrative proceedings.

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4 Id., pp. 428-437.

Petitioner, however, joins in respondent's position that the Court's jurisdiction is strictly appellate in nature. It submits that its strategy during trial was focused on addressing the reasons for denial expressly stated in respondent's letter. Thus, petitioner argues that its right to due process was violated when the Court went beyond the issues elevated at the judicial level and anchored its denial on the issue that had already been passed upon by respondent and for which there was no legitimate dispute.

In its own MR, petitioner challenges the Court's Decision on the following grounds:

First, petitioner refutes the Court's finding that respondent's denial letter did not violate its right to due process. Petitioner maintains that the denial letter failed to state the factual and legal bases for denying its claim for refund, contary to the mandate of the Tax Reform for Acceleration and Inclusion Act (**TRAIN**) Law. Now that the TRAIN Law expressly mandates a positive duty on the part of respondent, it behooves the Court to no longer tolerate the manner by which respondent adjudicates administrative claims for refund.

While petitioner agrees that the proceedings before this Court is a *trial de novo*, it believes that the rule does not do away with the fundamental principle that factual issues which the parties did not dispute need not be litigated upon. The Rules of Court (**ROC**) mandates that issues for trial be limited only to those where there are real disagreements.

Second, petitioner remains firm that the zero-rated sales are fully accounted for. The Court commissioned Independent Certified Public Accountant (**ICPA**) already made a conclusion that petitioner's sales are fully accounted and that the inward remittances are fully traceable to the invoices.

Anent the sales invoices dated outside the period of claim, specifically Exhibits "P-62-e", "P-63-t", and "P-63-u", these exhibits allegedly pertain to petitioner's bill and hold sales explained in the ICPA Report. Petitioner claims that sales of minerals entail special treatment because of its nature. The Philippine Accounting Standards (**PAS**) 18 was issued to require the recognition of revenue once there is a transfer of risks and rewards from the seller to the buyer even if the sales invoices are only issued in the subsequent period or quarters. Considering that the ICPA found the sales to be in order, and absent any countervailing evidence from respondent, the ICPA's conclusion should be given more weight. What is important is, these sales were recognized in the 3rd Quarter of 2016, the relevant period of the claim, and not in any other quarters.

Petitioner surmises that the confusion has probably sprung from the use of a "provisional invoice" which is common in the mining industry. According to it, it is not unusual that the valuation of the minerals at the point of shipment would differ from the valuation at the point of destination as the minerals may be subject to elements during vogaye. Just the same, the sales were recorded in the books and the VAT Returns whether covered by provisional or final invoices.

Third, export sales need not be supported by inward remittances. Petitioner disagrees with the Court's ruling that it is necessary that the foreign currency inward remittance be traced back to the sale to which it relates reasoning that the payment of export proceeds will not always be on a *per* invoice basis.

Moreover, petitioner claims to have gathered from the assailed Decision that the Court considers export sales to have been paid by showing certificate of inward remittance in order for said sales to qualify as valid export sales. To its mind, this would only be possible if the export sales were paid in the same quarter the sales were recognized. VAT returns are prepared quarterly and there is no way for petitioner to collect payment for its quarterly sales during the same period.

Petitioner also points out that proof of payment of foreign currency is applicable only to export sales of services and not to export sales of goods, especially to BOI-registered enterprises. Executive Order (**EO**) No. 226[5] only requires the actual shipment of goods from the Philippines to a foreign country. The Court's ruling requiring proof of foreign currency inward remittance to qualify as zero-rated sales contravenes the fundamental principles underlying the Philippine VAT system to automatically impose a 0% VAT on export sales so that the

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5 *The Omnibus Investments Code of 1987.*

goods are free of VAT when consumed abroad. Thus, what needs to be proven is only the actual exportation of goods.

Petitioner submits that there is no current Bangko Sentral ng Pilipinas (**BSP**) rules and regulations that a taxpayer should act in accordance with. In fact, even the BSP finds it unnecessary to ascertain whether exporters are compliant with the BSP rules and regulations on the accounting of export sales proceeds because with the liberalization of foreign currency transactions, there is practically no more BSP rules that can be violated by exporters.

Petitioner also to be unaware of any law or jurispurdence requiring exporters to make sure that the foreign currency remittances for the period should have been paid before the same can be considered as export sales. In sale of goods, the taxpayer decides whether to subject the sale to 12% VAT or 0% VAT at the time of the preparation of invoices. It need not wait for payment and the inward remittance thereof to consider sales as subject to 0% VAT. The timing of the recording of the sale of goods and the payment may not fall on the same quarter, hence the payment received for the month could not always correspond to the sales for the particular quarter.

Fourth, the allocation made by the Court to taxable and exempt sales does not apply to 100% BOI-registered exporters. Even if the sales cannot be traced back to the inward remittances, the sales does not automatically become vatable so as to deny such portion in the claim for refund. Thus, as long as the input VAT is attributable to the export sales, the whole amount should be refundable. There was no evidence presented indicating that input taxes were not attributable to export sales.

As a BOI-registered enterprise, petitioner claims that it is entitled to have its export sales treated as zero-rated and any doubt as to its treatment should be resolved in its favor.

Lastly, petitioner moves that ICPA Fernando Rimando (**Rimando**) be recalled to the witness stand to shed light on his conclusion contained in his ICPA Report and to explain the zero-rated sales to the satisfaction of the Court based on evidence on record.

We resolve.

After a thorough second hard look on the records of this case and the parties' contrasting arguments, We find no compelling reason to deviate from our ealier disquisitions for the reasons that will be essayed below.

RESPONDENT'S MOTION FOR PARTIAL RECONSIDERATION (MPR)

Respondent's MPR is bereft of merit. While respondent cited a handful of jurisprudence that supposedly supports his arguments; he, however failed to substantiate how these legal precepts are applicable in the case.

Notably, among the ends to which a motion for reconsideration is addressed, is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence; and in doing so, the movant has to dwell of necessity upon the issues passed upon by the court.[6]

In cases where a motion for reconsideration was held to be *pro forma*, the motion was held as such because (1) it was a second motion for reconsideration, or (2) **it did not comply with the rule that the motion must specify the findings and conclusions alleged to be contrary to law or not supported by the evidence**, or (3) it failed to substantiate the alleged errors.[7]

Even after carefully sifting through the MPR, respondent still failed to present plausible arguments to warrant the reversal of the assailed Decision.

PETITIONER'S MOTION FOR RECONSIDERATION (MR)

Similarly, this Court is unconvinced of petitioner's arguments. We will address petititioner's arguments, *in seriatim*.

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6 *Philippine National Bank v. Hon. Jose G. Paneda, et al.*, G.R. No. 149236, 14 February 2007.
7 Id.

A. BUREAU OF INTERNAL REVENUE'S (**BIR**'s) DENIAL LETTER IS VALID

Petitioner still insists that the denial letter by respodent is void for failing to state the factual and legal bases as mandated by TRAIN law.

At this juncture, We reiterate in affirmance our discussion in the assailed Decision:

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> We are not convinced that the BIR's denial letter should be invalidated as petitioner so insisted. While the amendment in the TRAIN Law obligates the Commissioner to state the factual and legal basis for the denial of the refund claim, respondent's denial letter, although not as detailed as petitioner expected, could not be deemed as outright void. We do not find its brevity violative of petitioner's right to due process.
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> At any rate, even if We were to invalidate the denial letter, the same would not automatically result in the grant of petitioner's claim for refund. The Cout conducts trial *de novo* and claimants for refund must prove every minute detail of their case. The Supreme Court in *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue* ruled:
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>> ...
>> Under Section 8 of RA 1125, the CTA is described as a court of record. As cases filed before it are litigated *de novo*, party litigants should prove every minute aspect of their cases. No evidentiary value can be given the purchase invoices or receipts submitted to the BIR as the rules on documentary evidence require that these documents must be formally offered before the CTA.[8]
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> ...

Thus, We still hold that respondent's BIR denial letter is valid and it is incumbent upon petitioner to prove its entitlement to the claim for refund before the Court.

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8 Citation omitted.

B. PETITIONER'S BILL AND HOLD SALES

Petitioner asserts that the sales invoices dated outside the period of claim must not be disallowed for purposes of determining the amount of valid zero-rated sales since these pertain to petitioner's bill and hold sales. Under such revenue recognition method, revenue is recognized in the books once there is a transfer of risks and rewards to the buyer even if the corresponding sales invoices are only issued in the subsequent period or quarters.

We disagree.

It bears stressing that the subject period for the claim of refund is 3rd quarter of TY 2016 (i.e., from 01 July to 30 September 2016). Thus, the relevant sales must be made within the subject period in accordance with Section 112[9] of the NIRC, as amended. Moreover, Section 113(B)(3)[10] of the NIRC, as amended, recognizes that the **invoice date represents the date when the transaction is made**. It would be absurd and incongruous with the invoice-based method of tax refund[11] if We sustain petitioner's argument to disregard the date so indicated in the sales invoices.

Even if We lend succor to petitioner's argument that this resulted from the bill and hold revenue recognition method adopted by petitioner, the same is still unavailing. Under the bill and hold sales,

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9 **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...

10 **Sec. 113**. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

...

(B) *Information Contained in the VAT Invoice or VAT Official Receipt.* - The following information shall be indicated in the VAT invoice or VAT official receipt:

...

(3) **The date of transaction**, quantity, unit cost and description of the goods or properties or nature of the service; and... (Emphasis supplied)

11 *CIR v. Mirant Pagbilao Corporation*, 586 Phil. 712 (2008) citing *CIR v. Seagate Technology (Philippines)*, 491 Phil. 317 (2005).

delivery is delayed at the buyer's request, but the **buyer already takes the title** and accepts the billing.[12]

Corollary thereto, Revenue Memorandum Circular (**RMC**) No. 22-2006[13] states:

> ...
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> I. *Tax Treatment of Sale of Goods* — For the sale of goods, a value added tax (VAT) shall be imposed based on the gross sales for a given taxable period. Gross sales shall mean the **total sales from consummated transactions** whether paid or still payable or upon its accrual. Consummation of the transaction shall mean the delivery and acceptance of the goods with the corresponding **issuance of the sales invoice.**[14]
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> ...

Applying the foregoing to a bill and hold sale, a sales invoice must be dated and issued at the moment the buyer takes title since the sale has been consummated, regardless of the timing of actual delivery. Indubitably, a bill and hold revenue recognition method would generally not result to a discrepancy between the invoice date and the recording date in petitioner's books.

C. PROOF OF INWARD REMITTANCE IS NECESSARY

With respect to the inward remittances, it is petitioner's position that actual export sales made by BOI-registered entities, such as itself, need not be supported by inward remittances in order to be VAT zero-rated.

Again, We disagree with petitioner.

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12 Appendix A (Illustrative Examples), International Accounting Standards (IAS) 18 *Revenue*, available at https://service.betterregulation.com/document/319490 (last accessed 03 May 2021).

13 Clarifying Certain Issues Relating to the Implementation of the Increase in the VAT Rate from 10% to 12% on the Sale of Goods Pursuant to Republic Act No. 9337.

14 Emphasis supplied.

Sections 106 (A)(2)(a)(1) and 112(A) of the Tax Code, as amended, are very clear and instructive as to the minimum requirements of claim for refund arising from actual export sales, as follows:

...

Section 106. *Value-Added Tax on Sale of Goods or Properties.* —

(A) *Rate and Base of Tax.* — There shall be levied, assessed and collected on every sale, barter or exchange of goods or properties, value-added tax equivalent to twelve percent (12%) of the gross selling price or gross value in money of the goods or properties sold, bartered or exchanged, such tax to be paid by the seller or transferor.

...

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)**[15]

...

Section 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

[15] Section 31 of the TRAIN; Emphasis supplied.

> 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 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 (B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.[16]

...

There is nothing in the Tax Code that indicates that Section 106 (A)(2)(a)(1) does not cover actual export sales made by BOI-registered entities. On the contrary, it expressly provides that "actual shipment of goods from the Philippines to a foreign country... 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)". *Ubi lex non distinguit, nec nos distinguere debemus,* where the law does not distinguish, neither should we distinguish.

We have consistently opined that as long as there is an actual shipment of goods from the Philippines to a foreign country, regardless of the incentive the exporter is enjoying, it must be supported with a certificate of inward remittance or a bank-certified credit memo to show that it was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. In *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*[17], the Supreme Court highlights the importance of a certificate of inward remittance in order for a claim for refund arising from actual export sales to succeed, to wit:

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[16] Section 36 of the TRAIN; Emphasis supplied.
[17] 550 Phil. 751 (2007).

> ...
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> To the mind of the Court, these documentary evidence submitted by petitioner, e.g., summary of export sales, sales invoices, official receipts, airway bills and export declarations, prove that it is engaged in the "sale and actual shipment of goods from the Philippines to a foreign country." In short, petitioner is considered engaged in export sales (a zero-rated transaction) if made by a VAT-registered entity. **Moreover, the certification of inward remittances attests to the fact of payment "in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the BSP."** Thus, petitioner's evidence, juxtaposed with the requirements of Sections 106 (A)(2)(a)(1) and 112(A) of the Tax Code, as enumerated earlier, sufficiently establish that it is entitled to a claim for refund or issuance of a tax credit certificate for creditable input taxes.[18]
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> ...

Noteworthy is the fact that petitioner's Board of Investments (**BOI**) Certificate of Registration and the corresponding Specific Terms and Conditions[19] do not mention its VAT zero-rating entitlement arising from actual export sales nor its exception from compliance with the general requirement under Section 106 (A)(2)(a)(1). Thus, the VAT zero-rating of petitioner's actual export sales does not come from its registration with the BOI but from the explicit provision of the Tax Code – Section 106 (A)(2)(a)(1).

Petitioner further claims that requiring proof of the inward remittance of foreign currency would mean that the exportation of goods and payment thereof should happen in the same taxable quarter to qualify as zero-rated sales. This is erroneous. There is nothing in the NIRC and rules that requires payment within the same taxable quarter before the sale of goods can be treated as zero-rated sale. It is at the time of sale, as petitioner pointed out, that the taxpayer determines the nature of the sale, whether subject to 12% VAT, 0% VAT or exempt, and issues the corresponding invoice. The classification at the time of sale remains to be such nothwithstanding the timing of payment of the goods.

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18 Emphasis supplied.
19 Exhibit "P-4", Division Docket, p. 293.

The requirement for proof of inward remittance will come into play when the taxpayer files a claim for refund of its unutilized input VAT arising from the zero-rated sales, for which the taxpayer is accorded two (2) years from the close of the taxable quarter when the sales were made. As it has been established, the claim for refund relies heavily on substantiation. Thus, it is one thing to have zero-rated sales, and another to actually be entitled to the refund of unutilized input VAT arising from such zero-rated sales.

Verily, our laws do not provide for automatic entitlement to refund or credit of input taxes once a taxpayer engaged in zero-rated sales. The taxpayer-claimant should discharge the burden of proof with every detail of its entitlement to such. This is in consonance with the long standing principle that a tax refund is in the nature of tax exemption. As it is, claim of excemption is regarded as in derogation of sovereign authority and to be strictly construed against the taxpayer-claimant.[20]

D. REOPENING OF THE CASE NOT AN AVAILABLE OPTION

We find no cogent reason to grant petitioner prayer to reopen the case and recall the ICPA to the witness stand (to explain his conclusions in the ICPA Report). It is noteworthy that the Court has already thoroughly considered the ICPA Report in arriving at the Decision.

In *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[21], the Supreme Court ruled:

> ...
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> There can be no dispute that the taxpayer-claimant has the burden of proving the legal and factual bases of its claim for tax credit or refund, but once it has submitted all the required documents, it is the function of the BIR to assess these documents with purposeful dispatch. It therefore falls upon herein petitioner corporation to first establish that its sales qualify for VAT zero-rating under the existing laws (legal basis), and then to present sufficient

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20 *Commissioner of Internal Revenue v. Procter and Gamble Philippine Manufacturing Corporation, et al.*, G.R. No. L-66838, 02 December 1991.

21 G.R. Nos. 141104 & 148763, 08 June 2007.

> evidence that said sales were actually made and resulted in refundable or creditable input VAT in the amount being claimed (factual basis).
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> ...
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> Besides, litigation is not a "trial and error" proceeding. A party who moves for a new trial on the ground of mistake must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate. Ordinary prudence in these cases would have dictated the presentation of all available evidence that would have supported the claims for refund/credit of input VAT of petitioner corporation...[22]
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> ...

WHEREFORE, with the foregoing premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 28 October 2020) and petitioner's Motion for Reconsideration (with Motion for Leave of Court to Reopen the Case for the Recall of a Witness) are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

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22 Citations omitted.