REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

KURIMOTO (PHILIPPINES) CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9211

Members:

CASTAÑEDA, JR., *Chairperson and*
MANAHAN, *JJ.*

Promulgated:

JUN 1 9 2019 2:30 pm

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RESOLUTION

MANAHAN, *J.:*

On February 21, 2019, respondent Commissioner of Internal Revenue (CIR) filed his Motion for Partial Reconsideration assailing the Decision of this Court dated February 6, 2019. The said Decision disposed of the case, as follows:

> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner the amount of **ONE MILLION NINE HUNDRED SEVENTY-SEVEN THOUSAND NINE HUNDRED SEVEN PESOS AND SEVEN CENTAVOS (Php1,977,907.07)** representing unutilized excess input VAT attributable to its zero-rated sales for the second quarter of calendar year 2013.
>
> **SO ORDERED.**

In his Motion, the CIR states that petitioner's supporting invoices and official receipts in support of its sales of services to a PEZA-registered entity for the second quarter of calendar year 2013 do not qualify for VAT-zero rating for failure to comply with the requirements under Section 108(B)(3) of the 1997 National Internal Revenue Code, as amended (NIRC), in relation to

Section 113 of the same code, as implemented by Revenue Regulations (RR) No. 16-05 and Revenue Memorandum Circular (RMC) No. 42-2003. Respondent also states that petitioner's documentary exhibits (i.e. PEZA Certification dated February 19, 2013; Service Agreement executed by petitioner Taganito HPAL Nickel Corporation (THPAL); Sales Invoices and Official Receipts in support of petitioner's sales of services to THPAL for the second quarter of CY 2013) have no probative value for being "hearsay evidence" as the same were prepared by a person different from the witness presented by petitioner. Respondent also argues that a claim for refund is strictly construed against petitioner for it partakes the nature of a tax exemption.

On April 16, 2019, the Court received petitioner's Comment (to Respondent's Motion for Partial Reconsideration), which was filed through registered mail on April 5, 2019. In its Motion, petitioner states that respondent did not discuss or provide which of petitioner's official receipts or invoices were not compliant, or which invoicing requirements were not complied with. Petitioner reiterates that the official receipts and invoices supporting petitioner's sale of services to THPAL are among the documents which were examined and verified by the independent certified public accountant (ICPA), who had the authority and duty to examine and verify petitioner's official receipts and invoices. Finally, petitioner states that it agrees with respondent that tax refunds are in the nature of tax exemptions and are strictly construed against the taxpayer. However, petitioner states that said rule does not mean that taxpayers may be denied their refund even if they have proven their right to such refund, as in the case of petitioner.

The Motion for Partial Reconsideration is denied.

Section 2, Rule 37 of the Rules of Court provides that "[a] motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions."

Based on the foregoing, respondent must point out specifically the VAT official receipt presented by petitioner which allegedly failed to comply with the invoicing requirements under the law, or which specific requirement was not complied with. However, respondent failed to do so. It is noteworthy that the Court already made specific factual findings upon the evidence presented by petitioner, leading to the grant of the refund in a reduced amount.

As to respondent's argument that the documents presented by petitioner are mere hearsay, the Supreme Court discussion in *Seaoil Petroleum Corporation v. Autocorp Group and Rodriguez*,[1] is enlightening:

> "... A sales invoice is a commercial document. Commercial documents or papers are those used by merchants or businessmen to promote or facilitate trade or credit transactions. Business forms, *e.g.*, order slip, delivery charge invoice and the like, are commonly recognized in ordinary commercial transactions as valid between the parties and, at the very least serve as an acknowledgement that a business transaction has in fact transpired. **These documents are not mere scrap of paper bereft of probative value, but vital pieces of evidence of commercial transactions. They are written memorials of the details of the consummation of contracts.**" (*Emphasis supplied*)

Thus, there is no merit to respondent's contention that official receipts, invoices and the like have no probative value. They are commonly recognized in ordinary commercial transactions and should not be considered bereft of probative value, even if the same have been identified and testified to in court by witnesses other than the persons who prepared such documents.

In the instant case, such documentary evidence were examined and verified by the ICPA, and later duly identified and marked as evidence before the Court.

The Court found that petitioner was able to establish its claim for refund or issuance of a tax credit certificate only for the reduced amount of Php1,977,907.07, representing its unutilized excess input VAT attributable to its zero-rated sales for the second quarter of calendar year 2013. Respondent presented no convincing argument nor cogent reason to reverse the above findings.

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[1] G.R. No. 164326, October 17, 2008.

WHEREFORE, respondent's Motion for Partial Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice