REPUBLIC OF THE PHILIPPINES

***Court of Tax Appeals***

QUEZON CITY

## *En Banc*

**CRESCENT PARK 14-678 PROPERTY HOLDINGS, INC.,**
*Petitioner,*

-*versus* –

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA EB NO. 1068**
(CTA CASE No. 8326)

Present:

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

Promulgated:

SEP 22 2015
3:09 p.m.

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# *RESOLUTION*

***BAUTISTA, J:***

For resolution is petitioner's "Motion for Reconsideration" filed on June 5, 2015, with no comment from respondent despite notice.

The Court *En Banc* on May 4, 2015 promulgated a Decision, the dispositive portion thereof states:

> **WHEREFORE,** premises considered, the Petition for Review filed by Crescent Park 14-678 Property Holdings, Inc., is hereby **DENIED.** Accordingly, the impugned Decision of the Court dated June 13, 2013, and Resolution dated September 10, 2013 are hereby **AFFIRMED.**

**SO ORDERED.**

Petitioner argues that its claim for refund of the excess input Value-added Tax ("VAT") paid for the purchase of land from a Philippine Economic Zone Authority ("PEZA") - registered entity, 14-678 Property Holdings, Inc. ("PHI"), under a lease-back agreement, cannot be denied on the basis that the official receipt issued by 14-678 PHI on August 13, 2009 did not contain the word "zero-rated."

It argues that it never alleged that the said purchase is VAT zero-rated; that the refund was indeed being made for the input VAT actually paid therefor; and that, consequently, petitioner was correct in not indicating the word "zero-rated" in the said receipt.

It further maintains that the Court erred in using the VAT invoice as basis instead of the official receipt since the recognition of input tax credit on the purchase of real properties is made upon actual payment thereof, and not on the time of sale.

Finally, it alleges that it is entitled to the refund or issuance of tax credit certificate ("TCC") for its unutilized input VAT incurred in the third quarter of 2009, attributable to its zero-rated sales pursuant to Section 112, in relation to Section 108(B)(3) of the 1997 National Internal Revenue Code ("NIRC").

We find no merit in petitioner's "Motion for Reconsideration."

The basis of petitioner's claim is the VAT it paid based on the contract of sale it entered with 14-678 PHI, which was never credited to any output tax on the succeeding quarters.

Under *Section 112(A) of the 1997 NIRC*, in order to be entitled to a refund/tax credit of unutilized input VAT, the following requisites must be satisfied:

1. the taxpayer must be VAT-registered;

> 2. the taxpayer must be engaged in sales which are zero-rated or effectively zero-rated;
>
> 3. the claim must be filed within two years after the close of the taxable quarter when such sales were made; and
>
> 4. the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax.

In the decision of the Court in Division, which was upheld by the Court *En Banc*, the Court ruled:

> xxx In Section 110(A)(3)(b)(2) of the NIRC of 1997, input tax has been defined as:
>
> > 'The term 'input tax' means the value-added tax from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.'
>
> Petitioner paid the alleged input tax on August 3, 2009 as indicated in the Sales Invoice issued by 14-678 PHI at the time petitioner was not yet registered as a VAT taxpayer. Based on the foregoing, petitioner, being a non-VAT taxpayer, cannot claim that it incurred input taxes.
>
> Furthermore, before the services rendered to persons or entities whose exemption under special laws effectively subjects the supply of such service to zero percent (0%) rate, it must be performed in the Philippines

> by VAT-registered persons. Therefore, petitioner's sale of service to 14-678 PHI on August 3, 2009 is not yet attributable to zero-rated or effectively zero-rated sales. xxx"

From the above, it is clear that petitioner's claim was denied because it failed to comply with the requirements set forth by the law.

Moreover, petitioner's reliance on *Section 4.110-1 of Revenue Regulations ("RR") No. 16-05* for its allegation that the recognition of the input tax credit from the sale of real properties should be made on the date of actual payment, is erroneous.

First of all, *Section 113(A) of the 1997 NIRC* is clear in requiring the issuance of a VAT INVOICE for every sale, barter or exchange of goods and properties for purchases of GOODS; and a VAT OFFICIAL RECEIPT for the lease of goods and properties, and the sale, barter or exchange of SERVICES. Moreover, *Section 4.110-8 of Revenue Regulations No. 16-05*, specifically requires a VAT invoice as a substantiation requirement for purchases of real properties, *viz*:

> SECTION 4.110-8. *Substantiation of Input Tax Credits.*
>
> (a) Input taxes for the importation of goods or the domestic purchase of goods, properties or services is made in the course of trade or business, whether such input taxes shall be credited against zero-rated sale, non-zero-rated sales, or subjected to the 5% Final Withholding VAT, must be substantiated and supported by the following documents, and must be reported in the information returns required to be submitted to the Bureau:
>
> xx xxx xxx
>
> (3) For the purchase of real property – public instrument i.e., deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with VAT invoice issued by the seller. [underscoring ours]

Second, *Section 4.110-1 of RR No. 16-05* only provides that for purchase of real properties to be creditable for input VAT, the said VAT should have been actually paid. However, it is not an indication that the same should be recognized on the date of actual payment or be based on the official receipts.

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

**SO ORDERED.**

**ROMAN G. DEL ROSARIO**
Presiding Justice

Juanito 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

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

Ma. Belen
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice