REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

VISAYAS GEOTHERMAL POWER COMPANY, Petitioner,	CTA Case No. 7889
	Members:
- versus -	UY, and FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 10 2020 · 1105 pm

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RESOLUTION

Fabon-Victorino, J.:

This resolves respondent's *Motion for Partial Reconsideration (Re: Amended Decision promulgated 4 September 2019)* filed on September 17, 2019, with petitioner's *Comment* thereto filed on November 26, 2019.

The dispositive portion of the assailed Amended Decision of September 4, 2019, reads as follows:

> **WHEREFORE**, the instant *Petition for Review* is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner Visayas Geothermal Power Company in the amount of **₱11,079,342.33** representing petitioner's unutilized input VAT for the four quarters of CY 2007 attributable to its zero-rated sales for the same taxable period.
>
> **SO ORDERED**.

In his plea for reconsideration, respondent invokes its lone argument, to wit:

> THE HONORABLE COURT ERRED IN RULING THAT PETITIONER WAS ABLE TO SUFFICIENTLY ESTABLISH ITS ENTITLEMENT TO THE REFUND/TAX CREDIT IN THE AMOUNT OF P11,079,342.33 REPRESENTING ITS UNUTILIZED EXCESS INPUT VAT FOR THE FOUR QUARTERS OF CY 2007 WHICH IS ATTRIBUTABLE TO ITS ZERO-RATED SALES/RECEIPTS FOR THE SAME PERIOD.

Respondent argues that only "creditable input taxes" that are "directly attributable" to zero-rated or effectively zero-rated sale may be refunded. He explains that to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production, or that the connection between the purchases and the finished product is "concrete" and not "imaginary" or "remote". Allegedly, the assailed Amended Decision failed to demonstrate that the purchases of goods or input taxes on the finished product were directly attributable to zero percent (0%) VAT sales. Without any basis, the Court ruled that petitioner was able to sufficiently establish its entitlement to the refund of unutilized excess input VAT which is attributable to zero-rated sales/receipts.

Finally, respondent invokes the tenet that tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. In the instant case, petitioner failed to present convincing proof that it is entitled to the relief sought justifying denial of its claim for refund.

In its *Comment*, petitioner seeks for the outright denial of respondent's motion for reconsideration due to alleged failure of respondent to cite any compelling ground to merit the reversal of the Assailed Decision. In any event, it raised the following defenses:

a. Respondent belatedly invoked his argument that only creditable input taxes that are directly attributable to zero-rated sales may be refunded;

b. Petitioner sufficiently established that it is entitled to the refund and/or issuance of tax credit certificate (TCC) for unutilized input VAT attributable to its zero-rated sales for the four quarters of 2007; and

c. The rule that "tax refunds must be construed *strictissimi juris* against the taxpayer" does not, at all times, apply to claims for refund of overpaid or erroneously paid taxes.

Respondent's *motion* has no leg to stand on.

Section 112(A)[1] of the NIRC of 1997, as amended, does not require that the input taxes subject of a claim refund be directly attributable to zero-rated sales or effectively zero-rated sales. Input taxes that bear direct or indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law.[2] Moreover, it allows the allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales.[3]

In the case of *Toledo Power Company vs. Commissioner of Internal Revenue*,[4] the Court ruled that not

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1 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, 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 sales 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 nonzero-rated sales.

2 *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 8905, October 19, 2017.

3 *CBK Power Company Limited vs. Commissioner of Internal Revenue*, CTA Case No. 7887, February 2, 2018.

4 CTA Case No. 8792, January 29, 2019.

only those purchases of goods that form part of the finished product of the taxpayer can be subject of an input VAT refund, thus:

> Section 110(A)(1) of the NIRC of 1997, as amended, provides that any input tax on the following transactions evidenced by a VAT invoice or official receipt shall be creditable against the output tax:
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> SEC. 110. Tax Credits. —
>
> (A) Creditable Input Tax. —
>
> (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
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> (a) Purchase or importation of goods:
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> (i) For sale; or
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> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
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> (iii) For use as supplies in the course of business; or
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> (iv) For use as materials supplied in the sale of service; or
>
> (v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.
>
> (b) Purchase of services on which a value-added tax has been actually paid.
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> Moreover, Section 110(A)(3) of the NIRC of 1997, as amended, provides that the term "input tax" means the value-added tax due 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.

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From the foregoing, it is significant to note that the NIRC did not limit input taxes to those purchases that only form part of the finished product of the taxpayer.

To the extent possible, words must be given their ordinary meaning; this is consistent with the basic precept of *verba legis*. The word "attribute," the adjective form of which is "attributable," is defined in the dictionary as "to explain as to cause or origin," in other words, "creditable input tax due or paid attributable to such sales" simply means that the input tax is connected with the zero-rated or effectively zero-rated sales.

Hence, when Section 112(A) of the NIRC of 1997, as amended, speaks of "creditable input tax due or paid attributable to such sales," it is more logical to interpret this phrase as referring to instances of an apportionment of the input VAT in mixed transactions (taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales) rather than on the classification of the purchase/expense/cost. However, respondent seem to have confused the phrases "attributable to such sales" and "directly and entirely attributed" to mean "direct costs" which applies to the computation of gross income.

The above interpretation of the phrase "attributable to such sales," to simply mean that the input tax is connected with a taxpayer's zero-rated or effectively zero-rated sales and not to its taxable or exempt sales, is likewise within the context of Section 112(A) of the NIRC of 1997, as amended, taking into consideration the proviso which states that "where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of 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." Hence, Section 112(A) of the NIRC of 1997, as amended, provides for a scenario where the taxpayer is engaged in (1) purely zero-rated or effectively zero-rated sales; (2) engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales and the creditable input tax due or paid can be attributed to each of the transactions; and (3)

> engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales but the creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions.
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> It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.

Significantly, evidence show that during the subject taxable year, (2007), petitioner's reported sales were all zero-rated, a fact that respondent failed to rebut. Necessarily, the input VAT was incurred in relation to such sales. Therefore, the input VAT claim is entirely attributable to petitioner's zero-rated sales.

On the matter, the ruling of the Supreme Court in the case of *Republic vs. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation)*[5] is apropos. The Final Arbiter held that when the taxpayer was able to establish *prima facie* its right to the refund by testimonial and object evidence, the BIR should present rebuttal evidence to shift the burden of evidence back to the taxpayer, *viz.*:

> We are likewise unmoved by the assertion of the petitioner that the respondent should have submitted the quarterly returns of the respondent to show that it did not carry-over the excess withholding tax to the succeeding quarter. **When the respondent was able to establish *prima facie* its right to the**

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[5] G.R. No. 188016, January 14, 2015.

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> **refund by testimonial and object evidence, the petitioner should have presented rebuttal evidence to shift the burden of evidence back to the respondent. Indeed, the petitioner ought to have its own copies of the respondent's quarterly returns on file, on the basis of which it could rebut the respondent's claim that it did not carry over its unutilized and excess creditable withholding taxes for the immediately succeeding quarters**. The BIR's failure to present such vital document during the trial in order to bolster the petitioner's contention against the respondent's claim for the tax refund was fatal.

WHEREFORE, finding no cogent reason to reverse and set aside the assailed Amended Decision, respondent's *Motion for Partial Reconsideration (Re: Amended Decision promulgated 4 September 2019)* is **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I CONCUR:

ERLINDA P. UY
Associate Justice