REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10382**

Members:

BACORRO-VILLENA, *Acting Chairperson, and*
CUI-DAVID, *JJ.*

Promulgated:
JUN 2 6 2023 2:03 pm

x - x

RESOLUTION

***BACORRO-VILLENA, J.*:**

For the Court's resolution is the "Motion for Reconsideration (Re: Decision promulgated 20 February 2023)"[1], filed by respondent Commissioner of Internal Revenue (**respondent/CIR**) on 01 March 2023, with "Comment (Re: Motion for Reconsideration dated March 1, 2023)"[2], filed by petitioner Oceanagold (Philippines), Inc. (**petitioner/OPI**) on 21 March 2023. The instant motion seeks the reversal of this Court's Decision dated 20 February 2023[3] (**assailed Decision**) which dispositive portion reads:

> ...
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> **WHEREFORE,** the foregoing premises considered, the Petition for Review filed by petitioner Oceanagold (Philippines), Inc. on 23 October 2020 is **PARTIALLY GRANTED.** Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED**

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1 Division Docket, Volume III, pp. 1223-1235.
2 Id., pp. 1239-1259.
3 Id., pp. 1191-1222.

to issue a **REFUND** or **TAX CREDIT CERTIFICATE** in the amount of **₱139,310,810.06** in favor of petitioner.

SO ORDERED.

...

In the instant motion, respondent contends that petitioner's claim for refund should not have been granted considering that there was no direct attribution between the input value-added tax (**VAT**) incurred and petitioner's zero-rated sales. Moreover, respondent argues that petitioner should not have been allowed to present evidence other than those previously submitted to the Bureau of Internal Revenue (**BIR**) during the administrative proceedings citing the Supreme Court's decision in *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[4] (**Total Gas**).

Petitioner, on the other hand, maintains that respondent's arguments are mere rehash of its previous contentions which were already addressed by the Court in the assailed Decision.

We resolve.

Even after a careful review of the records and the parties' arguments, We fail to see merit in the present MR.

As explained in the assailed Decision, where a taxpayer has both zero-rated and effectively zero-rated sales (like petitioner) and the input VAT incurred cannot be directly attributable to its sales, the input taxes shall be proportionately allocated on the basis of any of its sales volume following Section 112 of the National Internal Revenue Code (**NIRC**) of 1997, as amended, which provides:

> ...
> **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,

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4 G.R. No. 207112, 08 December 2015.

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 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: *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.

...

Moreover, petitioner's accumulation of input VAT during the subject taxable period was partially supported by its evidence. The Court observed, thusly:[5]

...

To establish that petitioner incurred/paid the aforementioned input VAT, petitioner submitted the original printouts of Single Administrative Document (**SAD**), Statement of Settlement of Duties and Taxes (**SSDT**), HSBC Bank Payment Details, Schedule of Importations for the period January 1, 2018 to December 31, 2018, Schedule of Amortization of Input Tax on Imported Capital Goods Exceeding ₱1 Million from Previous Quarter/Year, Schedule of Amortization of Input Tax on Locally Purchased Capital Goods Exceeding ₱1 Million from Previous Quarter/Year and local suppliers' invoices.

However, ICPA Artuz noted the following exceptions in the amount of ₱1,384,450.93:

Particulars	ICPA Annex	Amount
Amortization of 2014 domestic purchase of capital goods exceeding ₱1 Million supported only by scanned copy of VAT Invoice	Annex 2-Q1.7 Annex 2-Q2.7 Annex 2-Q3.7 Annex 2-Q4.7	₱36,857.16
Amortization of 2013 domestic purchase of capital goods exceeding ₱1 Million supported only by scanned copy of VAT Invoice	Annex 2-Q1.8 Annex 2-Q2.8	37,071.44
Importation of goods other than capital goods supported by original print-outs of SAD and further supported by original print-outs of Bank Statements but not supported by SSDT	Annex 2-Q4.9	156,130.00

5 Supra at note 3, pp. 1218-1219; Citations omitted and emphasis in the original text.

Amortization of 2013 domestic purchase of capital goods exceeding ₱1 Million not supported	Annex 2-Q1.10 Annex 2-Q2.10 Annex 2-Q3.10	897,676.42
Difference in input VAT amount on importation of goods other than capital goods *per* schedules and supporting documents	Annex 2-Q1.11	(7,650.00)
Difference in 2013 amortization of input VAT amount on domestic purchase of capital goods exceeding ₱1 Million *per* schedules and supporting documents (see Table 23, item 5)	Annex 2-Q1.12	264,365.91
Total		**₱1,384,450.93**

...

As regards respondent's reliance on the case of *Total Gas*[6], the Court finds respondent's interpretation thereof misleading. The Supreme Court in *Total Gas* explained the effects of inaction and dismissal of the administrative claim on a taxpayer's ability to present additional evidence on trial, to wit:

> ...
>
> A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim. It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have

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6 Supra at note 4; Citation omitted and italics in the original text.

> been submitted to the CIR as the case is being essentially decided in the first instance. The Total Gas must prove every minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim.
>
> ...

To summarize, the rules in *Total Gas* are as follows:

1. In appeals from the CIR's inaction, the Court may accept all evidence that may be presented by the taxpayer since there is no decision appealed from;

2. In appeals from the CIR's decision where the reason for dismissal is the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible for the taxpayer's failure to substantiate the claim at the administrative level; and,

3. In appeals from the CIR's decision where the reason for the dismissal is *not* the taxpayer's failure to submit complete documents despite notice/request, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim and that it satisfied all the documentary and evidentiary requirements for an administrative claim.

Despite respondent's decision on petitioner's administrative claim, a perusal of the case records immediately shows that petitioner appealed from respondent's inaction after its supposed non-receipt of respondent's decision on its claim. In fact, respondent's sole witness Revenue Officer Jayson B. Gordovez[7] (**RO Gordovez**) only testified that said decision was *allegedly* sent to petitioner. He, however, did not declare or make clear by which mode the (copy of the) decision was sent or whether petitioner received it.

A review of respondent's denial letter (**denial letter**) dated 11 September 2020[8] will also show that it does not bear any mark evincing that the same was served or at the very least, even sent to petitioner. Noticeably, the denial letter only shows that the same was

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7 Exhibit "R-6", Judicial Affidavit of Jayson B. Gordovez, Division Docket, Volume II, pp. 656-659.
8 Exhibit "R-4", BIR Records, p. 323.

received by the BIR's Assessment Service on 25 September 2020 and nothing more.

Considering that respondent's decision denying petitioner's claim for refund does not appear to have been served on petitioner, it was proper for petitioner to appeal from the CIR's inaction lest it risks its claim for refund to prescribe. Since the appeal stemmed from the CIR's inaction, this Court is not barred from receiving any and all material and relevant evidence that petitioner may produce in support of its claim in accordance with the rules established in *Total Gas*.

Given the above disquisitions, respondent fails to convince the Court that there exists any reason to warrant a reversal or modification of the assailed Decision.

WHEREFORE, the foregoing premises considered, the "Motion for Reconsideration (Re: Decision promulgated 20 February 2023)" filed by respondent on 01 March 2023 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice