REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

CHEVRON HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9350 & 9430

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
SEP 29 2020
2:42 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court's is respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 12 February 2020)**, filed by registered mail on February 20, 2020 and received by this Court on February 26, 2020, with petitioner's **Comment (To Respondent's Motion for Partial Reconsideration dated February 24, 2020)**, filed on July 1, 2020.

On February 12, 2020, the Court promulgated a Decision, partially granting petitioner's claim for refund of input value-added tax (VAT) attributable to its zero-rated sales, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the instant consolidated *Petitions for Review* is **PARTIALLY GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the amount of **Php27,540,901.25**, representing the latter's unutilized input VAT attributable to Petitioner's zero-rated sales for the first and second quarters of TY 2015.

SO ORDERED."

In his Motion, respondent prays for the complete denial of petitioner's claim for refund, primarily arguing that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. He asserts that the Court erred in ruling that the petitioner is entitled to a refund since there was no attributability established between the input tax on purchases vis-à-vis the zero-rated sales of petitioner. Respondent continues that the law provides that for input taxes on purchase of goods be creditable, they must be a factor in the chain of production. After determining which input taxes are "creditable", the law further requires a second evaluation to determine which of the creditable input taxes are directly attributable to the finished product whose sale is zero-rated. Thus, insisting that a claim for refund is in the nature of a tax exemption which must be construed *strictissimi juris* against a taxpayer, respondent contends that petitioner fell short of proving the veracity of its claim for refund.

On the other hand, in its comment, petitioner claims that the Decision assailed by respondent already extensively discussed petitioner's compliance with the requisites for refund of excess input VAT, specifically the requisite that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. As such, petitioner insists that direct attributability, that creditable input tax form part of the finished product, is not a requirement to successfully prove entitlement to a claim for refund.

The instant Motion for Partial Reconsideration is bereft of merit.

As correctly pointed out by petitioner, there is nothing in the law which requires a taxpayer-claimant to prove which of its purchases are directly attributable to its zero-rated transactions and which are directly attributable to its taxable transactions. In fact, Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for a situation where the taxpayer is engaged in zero-rated or effectively zero-rated sales and in taxable or exempt sales, and the input taxes cannot be directly and entirely attributed to any of the sales, in which case, the input taxes shall be allocated proportionately on the basis of the volume of sales, to wit:

> "**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." *(Emphasis supplied)*

From the foregoing, the law merely requires that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. The above provision does not specifically require that the refundable creditable input tax should be "directly attributable" to such sales. As a matter of fact, the law only mandates that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales. The law also allows allocation of input taxes in case the same cannot be directly or entirely attributed to any of the sales. Simply stated, input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales already satisfy the requirement of attributability.

Furthermore, with regard to respondent's argument that from the definitions provided by law, the input tax, to be creditable, 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, the Court likewise find it untenable.

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:

> "**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:
>
> (a) Purchase or importation of goods:

> (i) For sale; or
> (ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or
> (iii) For use as supplies in the course of business; or
> (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."

Moreover, Section 110(A)(3)[1] of the NIRC of 1997, as amended, provides that the term "input tax" means the VAT 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. Notably, the NIRC did not limit input taxes to those purchases that only form part of the finished product of the taxpayer.

"It is [a] well recognized rule that where the law does not distinguish, courts should not distinguish. *Ubi lex non, distinguit nec nos distinguere debemos*. The rule, founded on logic, is a corollary of the principle that general words and phrases in a statute should ordinarily be accorded their natural and general significance. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law. In other words, there should be no distinction in the application of a statute where none is indicated."[2]

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[1] "**SEC. 110.** *Tax Credits.* – x x x

(3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:

x x x

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. It shall also include the transitional input tax determined in accordance with Section 111 of this Code.

The term 'output tax' means the value-added tax due on the sale or lease of taxable goods or properties or services by any person registered or required to register under Section 236 of this Code."

[2] *Federated LPG Dealers Association v. Ma. Cristina L. Del Rosario, et al.*, G.R. No. 202639, November 9, 2016 citing *Philippine British Assurance Co., Inc. vs. Intermediate Appellate Court,* 234 Phil. 512, 519 (1987); italics and underscoring in the original.

Accordingly, 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, i.e., 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.

Needless to say, the Court has thoroughly scrutinized the evidence on record and determined that petitioner had both valid zero-rated or effectively zero-rated sales and taxable sales that shall be proportionately allocated on the basis of volume sales, to wit:

> "To reiterate, the *eighth* requisite is to the effect that the input taxes claimed are attributable to zero-rated or effectively zero-rated sales. However, where there are both zero-rated or effectively zero-rated sales and taxable or exempt sales, and the input taxes cannot be directly and entirely attributable to any of these sales, the input taxes shall be proportionately allocated on the basis of sales volume.
>
> In this case, for the subject periods of the claim, there exists a zero-rated or effectively zero-rated sales and taxable sales. Specifically, in the amended Quarterly VAT Return for the first quarter of TY 2015, Petitioner reported total sales in the amount of Php994,732,076.01; while in the amended Quarterly VAT Return for the second quarter of TY 2015, Petitioner declared its total sales in the amount of Php929,731,688.68. In other words, Petitioner had sales for the said periods in the aggregate amount ofPhp1,924,463,764.69.
>
> However, since its input VAT cannot be directly or entirely attributed to any of the transactions, this Court shall allocate the valid input VAT of Php39,168,665.68 proportionately on the basis of the volume of its sales, as shown below:

Taxable sales for the first and second quarters of TY 2015	Php 61,707,359.10
Divided by the Reported Total Sales per Amended Quarterly VAT Returns	Php1,924,463,764.69
Multiplied by Total Valid Input VAT	Php 39,168,665.68
Valid input VAT allocated to sales subject to the 12% VAT	**Php 1,255,931.63**

Total Valid Zero-Rated Sales	Php1,655,274,685.71
Divided by the Reported Total Sales per Amended Quarterly VAT Returns	Php1,924,463,764.69

Multiplied by Total Valid Input VAT	Php 39,168,665.68
Valid Input Vat allocated to valid zero-rated sales	**Php33,689,852.71**

Thus, for purposes of, and with regard to Petitioner's compliance with, the *eighth* requisite, only the amount of Php33,689,852.71 represents valid input VAT attributable to valid zero-rated sales.

x x x

As shown earlier, the valid input VAT attributable to valid zero-rated sales in the amount of Php33,689,852.71 shall then be utilized against the said remaining output VAT liability of Petitioner in the amount of Php6,148,951.46. Correspondingly, only the remaining input VAT of Php27,540,901.25 represents Petitioner's unapplied/ excess input VAT attributable to its valid zero-rated sales, x x x."[3]

In view of the foregoing, the Court finds that no new or substantial matter, or compelling reason was raised in the present Motion to justify the reversal or modification of the Decision assailed.

WHEREFORE, premises considered, respondent's Motion for Partial Reconsideration (Re: Decision promulgated 12 February 2020) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[3] Decision, pp. 49 to 49; 50.