REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

REMA TIP TOP PHILIPPINES, INC., *Petitioner*,	**CTA CASE NO. 10303**
	Members:
- versus -	**BACORRO-VILLENA**, *and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	Promulgated: OCT 29 2024 4:23 pm

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RESOLUTION

CUI-DAVID, J.:

On June 22, 2023, the Court promulgated a Decision (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **DENIED**, for lack of merit.
>
> **SO ORDERED.**

Unconvinced, petitioner filed the instant *Motion for Reconsideration with Tender of Excluded Evidence* through registered mail on July 10, 2023, which the Court received on July 25, 2023, asking the Court to reconsider its Decision based on the following grounds:

I. PETITIONER'S SALES, PURCHASES, AND IMPORTATIONS ARE PROPERLY SUBSTANTIATED AND COMPLIANT WITH RELEVANT REQUIREMENTS BASED ON THE EVIDENCE PRESENTED AS CONFIRMED BY THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT DULY COMMISSIONED BY THE HONORABLE COURT.

A. THE BOI CERTIFICATION STATING THAT FCF MINERALS CORPORATION EXPORTED 100% OF ITS

TOTAL SALES VOLUME/VALUE IN 2017 IS VALID FOR ONE YEAR, OR UNTIL 2018, UNDER RELEVANT REGULATIONS FOR PURPOSES OF VAT ZERO-RATING OF ITS PURCHASES FROM PETITIONER.

B. PETITIONER'S SALES OF SERVICES TO NON-RESIDENT FOREIGN CORPORATIONS QUALIFY FOR VAT ZERO-RATING AS ESTABLISHED BY THE EVIDENCE ON RECORD.

II. SALES, PURCHASES AND IMPORTATIONS OF PETITIONER SUPPORTED BY PHOTOCOPIES OF VAT SALES INVOICES AND OTHER SUBSTANTIATION DOCUMENTS ARE ADMISSIBLE UNDER JURISPRUDENCE AND RULE 130 OF THE 2019 REVISED RULES ON EVIDENCE.

III. INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES FOR PREVIOUS QUARTERS, INCLUDING THE SUBJECT OF THE INSTANT CLAIM, DO NOT AND WILL NEVER FORM PART OF "INPUT TAX CARRIED OVER FROM PREVIOUS PERIOD" (LINE 20A) IN ANY SUCCEEDING QUARTER'S VAT RETURN.

Petitioner claims that contrary to the Court's findings, the evidence it submitted were traced, examined, and confirmed by the Independent Certified Public Accountant (ICPA), who was tasked with reviewing and analyzing the documents. The ICPA found the evidence sufficient to support the petitioner's claim for a refund of input value-added tax (VAT). According to petitioner, the ICPA's findings, which confirmed petitioner's evidence, deserve great weight since both the (ICPA) testimony and her report were uncontroverted.

Petitioner likewise claims that in the assailed Decision, the Court denied petitioner's zero-rating of certain sales and input VAT on certain purchases and importations on the ground that only photocopies of the supporting documents were presented. However, petitioner submits that foregoing ruling should be reconsidered in light of jurisprudence and the 2019 Revised Rules on Evidence, providing that photocopies of documents are deemed as originals and should be admitted as evidence.

Petitioner rejects the Court's finding that it failed to prove that the subject claim was not carried over or applied against output tax in the succeeding quarters.

According to petitioner, the Court based its ruling on the observation that the tax overpayment (Line 29) in the VAT return for the fourth quarter of taxable year 2019, amounting to ₱7,021,779.79 did not tally with the reported "Input Tax Carried Over from the Previous Period" (Line 20A) in the VAT return for the first quarter of taxable year 2020, which amounted to ₱16,542,149.83. Hence, the Court ruled that it could not ascertain the discrepancy in the amount of ₱9,520,370.04 and may still include and apply the subject claim to output VAT liability in the first quarter of the taxable year 2020 and succeeding quarters.

Petitioner believes that the Court's concern is unfounded because input VAT attributable to zero-rated sales does not and will never form part of "Input Tax Carried Over from Previous Period" (Line 20A) in any succeeding quarter's VAT return. According to petitioner, the input VAT attributable to zero-rated sales for previous periods is kept separate and intact in "Others" (Line 20E), which forms part of "VAT Refund/TCC Claimed" (Line 23D) that is always removed from input tax available for credit against output tax. Hence, petitioner asserts that it has proven that the input tax attributable and allocable to zero-rated sales for taxable year 2018 has not been applied against output tax.

Finally, invoking Section 40,[1] Rule 132 of the Rules of Court, as amended, petitioner is making a tender of excluded evidence so that its denied exhibits may be attached to the records of the case. According to petitioner, the foregoing rule does not provide for a period for making a tender of excluded evidence, considering that the option is given to the offeror not to ask for the court of origin to change its ruling on the disallowance of the presentation of the evidence, but to attach the excluded evidence as part of the records available for the appreciation of appellate courts.

Despite due notice, respondent failed to file a comment/opposition to petitioner's motion.

We resolve.

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[1] Section 40. *Tender of excluded evidence.* - If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony.

After carefully reviewing the arguments raised by petitioner in its *Motion for Reconsideration with Tender of Excluded Evidence,* the Court finds no compelling reason to depart from its ruling in the assailed Decision dated June 22, 2023.

First, it must be impressed that the ICPA is commissioned merely to assist the Court in determining the merits of the taxpayer's claim. The Court may (or may not) adopt the ICPA's report either in full or in part, depending on its independent assessment of the documents upon which the ICPA's report is based. In other words, the Court conducts its own examination and verification of the documents audited or reviewed by the ICPA. The Court, in its sound discretion, may render judgment without considering the ICPA report. The ICPA report is only persuasive in nature and not conclusive upon the Court.

This principle is reflected in Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), which states as follows:

> SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**. (*Boldfacing supplied*)

Hence, the Court finds no merit in petitioner's argument that the ICPA's findings, which confirmed the evidence presented, should be given significant weight.

Second, let it be emphasized that the Court denied petitioner's claim for a refund because it failed to prove that the subject claim was neither carried over nor applied against any output tax in the succeeding quarters. Therefore, even if the Court were to reconsider the petitioner's excluded exhibits, the claim for a refund would still be denied. Besides, petitioner failed to file a motion for reconsideration when the Court

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denied its documentary exhibits in the Resolution[2] dated April 4, 2022. Hence, those exhibits were not considered in determining petitioner's claim for a refund.

Third, regarding petitioner's claim that it has clearly proven that the input tax attributable and allocable to zero-rated sales for taxable year 2018 has not been applied against output tax, *We* maintain our findings and reiterate the following disquisition:

> ***However, petitioner failed to establish that the subject claim was not carried-over, nor applied against any output tax, in the succeeding quarters.***
>
> ...
>
> Concerning the *ninth* requisite, petitioner submitted in evidence its amended Quarterly VAT Returns for the 4th quarter of TY 2017 to the 1st quarter of TY 2020. However, the Court finds the preceding documents insufficient.
>
> While petitioner's Quarterly VAT Returns for the four quarters of TY 2018 show that the claimed input taxes attributable to zero-rated sales/receipts were not credited against output taxes because of the substantial amount of input tax carried over from previous period, petitioner failed to prove that the claimed input taxes were not applied against any output tax in the succeeding quarters.
>
> It must be emphasized that although petitioner is allowed under Section 110(B) of the NIRC of 1997, as amended, to carry-over the excess input VAT of a given quarter to the succeeding quarter(s), petitioner is required to deduct the claimed input taxes from its accumulated input VAT as of the quarter when it opted to file a claim therefor as provided under Section 110(C) of the NIRC of 1997, as amended, to wit:
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> "SEC. 110. Tax Credits
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> xxx xxx xxx

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[2] Docket, pp. 2687-2693.

(C) *Determination of Creditable Input Tax.* - The sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter **shall be <u>reduced</u> by the amount of claim for refund or tax credit for value-added tax** and other adjustments, such as purchase returns or allowances and input tax attributable to exempt sale. xxx" (*Boldfacing supplied*)

The deduction ensures that the claimed input VAT shall not be carried-over nor applied against any output tax in the succeeding quarter(s).

In this case, the ICPA alleged that the tracing of petitioner's Quarterly VAT Returns for the TY 2018 and subsequent returns filed with the BIR in TYs 2019 and 2020 (Annexes "F" and "G") shows that while petitioner reported its purchases allocated to zero-rated sales in its VAT Returns (Line 21N), the corresponding amount of input tax on said purchases (Line 21O) allocated to zero-rated sales for each period and the carry-over from the previous period (Line 20E) were deducted as VAT Refund in said VAT Returns (Line 23D). The net effect of this computation is zero. Thus, the ICPA asserts that it can be said that the amount of input tax allocated to zero-rated sales in TY 2018 was not utilized by petitioner in TYs 2019 and 2020.

A perusal of petitioner's Quarterly VAT Returns for TYs 2018 and 2019 shows that petitioner habitually carried-over the cumulative amount of *"VAT Refund/TCC Claimed"* (Line 23D) from the previous period as allowable input tax *"Others"* for the succeeding period (Line 20E). Simultaneously, the sum of previous period's *"VAT Refund/TCC Claimed"* (Line 23D) or each quarter's *"Others"* (Line 20E) and each quarter's input tax allocated to zero rated sales (*"Others"*, Line 21O) was reported as deduction from input tax as *"VAT Refund/TCC claimed"* (Line 23D) for the current quarter, from one period to another, detailed as follows:

<u>Amended Quarterly VAT Returns for</u> ***<u>TY 2018:</u>***

Exhibit No.	*"P-10"*	*"P-11"*	*"P-12"*	*"P-13"*
Docket-Vol. V, pp.	*2451-2452*	*2453-2454*	*2455-2456*	*2457-2458*
TY 2018	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**
Output Tax Due *(Line 19B)*	**₱ 581,897.49**	**₱ 575,648.60**	**₱ 643,541.68**	**₱ 516,880.83**
Less: Allowable Input Tax				
Input Tax Carried Over from Previous Period *(Line 20A)*	₱ 8,446,334.93	₱ 8,074,557.43	₱ 8,057,337.89	₱ 7,642,122.50

Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter *(Line 20B)*	-	-	56,250.00	56,250.00
Others *(Line 20E)*	7,275,535.75	8,292,359.03	9,893,715.78	10,997,107.00
Total *(Line 20F) (Sum of Items 20A, 20B & 20E)*	**₱15,721,870.68**	**₱16,366,916.46**	**₱18,007,303.67**	**₱18,695,479.50**
Current Transactions				
Purchase of Capital Goods exceeding ₱1Million *(Line 21D)*	₱ -	₱ 1,125,000.00	₱ -	₱ -
Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	25,720.75	12,837.98	35,667.65	13,196.92
Importation of Goods Other than Capital Goods *(Line 21H)*	66,711.98	421,884.88	81,095.17	30,498.28
Domestic Purchase of Services *(Line 21J)*	117,687.26	67,456.20	55,313.47	41,034.21
Others *(Line 21O)*	1,016,823.28	1,601,356.75	1,103,391.22	712,959.45
Total Available Input Tax *(Line 22) (Sum of Items 20F, 21D, 21F, 21H, 21J & 21O)*	**₱16,948,813.95**	**₱19,595,452.27**	**₱19,282,771.18**	**₱19,493,168.36**
Less: Deductions from Input Tax				
Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period *(Line 23A)*	₱ -	₱ 1,068,750.00	₱ -	₱ -
VAT Refund / TCC claimed *(Line 23D)*	8,292,359.03	9,893,715.78	10,997,107.00	11,710,066.46
Total *(Line 23F) (Sum of Items 23A & 23D)*	**₱ 8,292,359.03**	**₱10,962,465.78**	**₱10,997,107.00**	**₱11,710,066.46**
Total Allowable Input Tax *(Line 24) (Item 22 less Item 23F)*	**₱ 8,656,454.92**	**₱ 8,632,986.49**	**₱ 8,285,664.18**	**₱ 7,783,101.90**
Tax Overpayment *(Lines 25, 27 & 29) (Item 19B less Item 24)*	**₱(8,074,557.43)**	**₱(8,057,337.89)**	**₱(7,642,122.50)**	**₱(7,266,221.07)**

<u>Amended Quarterly VAT Returns for</u> ***<u>TY 2019:</u>***

Exhibit No.	*"P-94"*	*"P-95"*	*"P-96"*	*"P-97"*
Docket-Vol. V, pp.	*2630-2631*	*2632-2633*	*2634-2635*	*2636-2637*
TY 2019	**1st Quarter**	**2nd Quarter**	**3rd Quarter**	**4th Quarter**
Output Tax Due *(Line 19B)*	**₱ 450,755.27**	**₱ 675,202.18**	**₱ 427,165.62**	**₱ 667,443.14**
Less: Allowable Input Tax				
Input Tax Carried Over from Previous Period *(Line 20A)*	₱ 7,266,221.07	₱7,263,932.66	₱ 7,332,206.11	₱ 7,143,316.02
Input Tax Deferred on Capital Goods Exceeding ₱1Million from Previous Quarter *(Line 20B)*	56,250.00	56,250.00	56,250.00	56,250.00
Others *(Line 20E)*	11,710,066.46	13,262,694.77	14,407,043.09	16,020,993.31
Total *(Line 20F) (Sum of Items 20A, 20B & 20E)*	**₱19,032,537.53**	**₱20,582,877.43**	**₱21,795,499.20**	**₱23,220,559.33**
Current Transactions				
Purchase of Capital Goods exceeding ₱1Million *(Line 21D)*	₱ -	₱ -	₱ -	₱ -
Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	18,537.06	30,006.80	17,257.82	51,756.86
Importation of Goods Other than Capital Goods *(Line 21H)*	327,818.22	540,670.47	122,336.01	340,200.29
Domestic Purchase of Services *(Line 21J)*	45,861.58	116,548.36	42,431.70	97,699.75
Others *(Line 21O)*	1,552,628.32	1,144,348.31	1,613,950.22	1,160,500.00
Total Available Input Tax *(Line 22) (Sum of Items 20F, 21D, 21F, 21H, 21J & 21O)*	**₱20,977,382.71**	**₱22,414,451.37**	**₱23,591,474.95**	**₱24,870,716.23**
Less: Deductions from Input Tax				
Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period *(Line 23A)*	₱ -	₱ -	₱ -	₱ -
VAT Refund / TCC claimed *(Line 23D)*	13,262,694.77	14,407,043.09	16,020,993.31	17,181,493.30
Total *(Line 23F) (Sum of Items 23A & 23D)*	**₱13,262,694.77**	**₱14,407,043.09**	**₱16,020,993.31**	**₱17,181,493.30**

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Total Allowable Input Tax *(Line 24) (Item 22 less Item 23F)*	**₱ 7,714,687.94**	**₱ 8,007,408.28**	**₱ 7,570,481.64**	**₱ 7,689,222.93**
Tax Overpayment *(Lines 25, 27 & 29) (Item 19B less Item 24)*	**₱(7,263,932.67)**	**₱(7,332,206.10)**	**₱(7,143,316.02)**	**₱(7,021,779.79)**

From the foregoing, the cumulative figures of *"VAT Refund/TCC claimed"* (Line 23D) reported for TYs 2018 and 2019 included the input VAT claim of ₱4,434,530.00 which was deducted as part of the *"VAT Refund/TCC Claimed"* for the four quarters of TY 2018. Said amount is determined as follows:

Exhibit No.	**TY 2018**	**VAT Refund/ TCC claimed** *(Line 23D)*	**Less: Others** *(Line 20E)*	**VAT Refund/ TCC claimed for the quarter**
"P-10"	1st Quarter	₱8,292,359.03	₱ 7,275,535.75	₱ 1,016,823.28
"P-11"	2nd Quarter	9,893,715.78	8,292,359.03	1,601,356.75
"P-12"	3rd Quarter	10,997,107.00	9,893,715.78	1,103,391.22
"P-13"	4th Quarter	11,710,066.46	10,997,107.00	712,959.46
Total				**₱4,434,530.71**

Based on petitioner's amended Quarterly VAT Returns, as mentioned earlier, the tax overpayment for each quarter to be carried over to the succeeding quarter matched from the 1st quarter of TY 2018 to the 4th quarter of TY 2019. However, the tax overpayment in the amount of ₱7,021,779.79 for the 4th quarter of TY 2019 does not tally with the reported "*Input Tax Carried Over from Previous Period*" in the amount of ₱16,542,149.83 for the 1st quarter of TY 2020. The *"Input Tax Carried Over from Previous Period"* for the 1st quarter of TY 2020 is way higher than the tax overpayment from the 4th quarter of TY 2019 by ₱9,520,370.04, shown as follows:

Exhibit No.	*"P-97"*	*"P-3796"*
Docket-Vol. V, pp.	*2636-2637*	*USB*
Period	**4th Quarter of TY 2019**	**1st Quarter of TY 2020**
Output Tax Due ***(Line 19B)***	**₱ 667,443.14**	**₱ 576,445.77**
Less: Allowable Input Tax		
Input Tax Carried Over from Previous Period *(Line 20A)*	₱ 7,143,316.02	₱ 16,542,149.83
Input Tax Deferred on Capital Goods exceeding ₱1Million from Previous Quarter *(Line 20B)*	56,250.00	56,250.00
Others *(Line 20E)*	16,020,993.31	11,710,066.46
Total ***(Line 20F) (Sum of Items 20A, 20B and 20E)***	**₱23,220,559.33**	**₱ 28,308,466.29**
Current Transactions		
Purchase of Capital Goods exceeding ₱1Million *(Line 21D)*	₱ -	₱ -
Domestic Purchases of Goods Other than Capital Goods *(Line 21F)*	51,756.86	19,930.80
Importation of Goods Other than Capital Goods *(Line 21H)*	340,200.29	99,789.35
Domestic Purchase of Services *(Line 21J)*	97,699.75	120,086.86

Services Rendered by Non-residents *(Line 21L)*	-	180,205.71
Others *(Line 21O)*	1,160,500.00	1,638,277.08
Total Available Input Tax *(Line 22)* *(Sum of Items 20F, 21D, 21F, 21H, 21J, 21L & 21O)*	**₱24,870,716.23**	**₱ 30,366,756.09**
Less: Deductions from Input Tax		
Input Tax on Purchases of Capital Goods exceeding ₱1Million deferred for the succeeding period *(Line 23A)*	-	-
VAT Refund/TCC claimed *(Line 23D)*	17,181,493.30	13,348,343.62
Total *(Line 23F) (Sum of Items 23A & 23D)*	**₱17,181,493.30**	**₱ 13,348,343.62**
Total Allowable Input Tax *(Line 24)* *(Item 22 lessItem 23F)*	**₱ 7,689,222.93**	**₱ 17,018,412.47**
Tax Overpayment *(Lines 25, 27 & 29)* *(Item 19B less Item 24*	**₱(7,021,779.79)**	**₱(16,441,966.70)**

The ICPA noted that the amount of VAT refund carried over in the 1st quarter of TY 2020 (Line 20E) pertains to the amount of VAT refund per VAT Return for the 4th quarter of TY 2018 instead of the amount of VAT refund per VAT Return for the 4th quarter of TY 2019. Petitioner claims that this was their presentation since it will no longer claim for VAT refund the input VAT for zero-rated sales for the TY 2019.

Moreover, the ICPA points out that the input tax allocated to zero-rated sales, first presented in Line 20E *"Others"* of the 1st quarter VAT Return for TY 2019, amounted to ₱11,710,066.46. This amount consists of ₱7,275,535.75, which is the amount of input tax allocated to zero-rated sales as of the 4th quarter of TY 2016, and ₱4,434,530.71, which is the amount of input tax allocated to zero-rated sales for TY 2018 and the subject matter of this Petition.

Nevertheless, the Court cannot ascertain whether the discrepancy in the amount of ₱9,520,370.04 between the tax overpayment of ₱7,021,779.79 for the 4th quarter of TY 2019 *vis-à-vis* the *"Input Tax Carried Over from Previous Period"* of ₱16,542,149.83 for the 1st quarter of TY 2020 does not include the claimed amount of ₱4,434,530.00. *Albeit* the input VAT claimed amount of ₱4,434,530.00 formed part of the cumulative figures of both *"Others"* (Line 20E) and *"VAT Refund/TCC claimed"* (Line 23D), in the respective amounts of ₱11,710,066.46 and ₱13,348,343.62, for the 1st quarter of TY 2020, nonetheless, the *"Input Tax Carried Over from Previous Period"* of ₱16,542,149.83 for the 1st quarter of TY 2020 remains excessive. Moreover, even if the input VAT allocated for zero-rated sales for TY 2019 in the total amount of ₱5,471,426.85 is to be added back to the overpayment of ₱7,021,779.79 for the 4th quarter of TY 2019, the resulting amount of ₱12,493,206.64 is still lower than the actual *"Input Tax Carried Over from Previous Period"* in the amount of ₱16,542,149.83 for the 1st quarter of TY 2020 by ₱4,048,943.19. Hence, the subject claim may still form part of the ₱16,542,149.83 carried over to the 1st quarter of TY 2020 and, consequently, be applied to the output VAT

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> liability in the said quarter and the succeeding taxable quarters.
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> In sum, notwithstanding that out of the total claim of ₱4,434,530.00, petitioner was able to prove that the amount of ₱1,017,115.41 represents unutilized input VAT attributable to its zero-rated sales/receipts for the TY 2018, the latter amount cannot be granted since petitioner failed to establish that it was *not* carried-over *nor* applied against any output tax in the succeeding quarters. (*Footnotes omitted*)

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

On the other hand, petitioner's *Tender of Excluded Evidence,* is **NOTED**.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice