20-000458-0069

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10434

MONTE SOLAR ENERGY INC.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. BRYAN ANTHONY C. DIEGO
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam. P. Defensor-Santiago Avenue
Diliman, Quezon City

SALVADOR LLANILLO & BERNARDO
Units 815-816, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **May 2, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 3, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MONTE SOLAR ENERGY INC., *Petitioner,*	**CTA Case No. 10434**
	Members: **DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 02 2024; 2:05PM

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RESOLUTION

REYES-FAJARDO, *J.*:

For the Court's resolution is respondent Commissioner of Internal Revenue's Motion for Partial Reconsideration *(Re: Decision promulgated on 18 January 2024)* ("Motion")[1] filed on February 7, 2024, with petitioner Monte Solar Energy, Inc.'s Comment (Re: Respondent's Motion for Partial Reconsideration)[2] posted on March 4, 2024.

In the Motion, petitioner prays that the Court reconsider the Decision (assailed Decision),[3] promulgated on January 18, 2024. The *fallo* of which reads:

> **WHEREFORE,** the Petition for Review filed on December 29, 2020, by Monte Solar Energy Inc. is **PARTIALLY GRANTED.**

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1 Docket—Vol. II, pp. 916 to 929.
2 *Id.* at unpaged.
3 *Id.* at pp. 873 to 915.

> Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the amount of **₱4,128,580.59**, representing the latter's unutilized input VAT attributable to its zero-rated sales for the 1st to 4th quarters of CY 2018.
>
> **SO ORDERED.**

In the assailed Decision, the Court explained that the following conditions must be present to accord zero percent (0%) value-added tax (VAT) on petitioner's local purchases of goods, properties and services under Section 15(g) of Republic Act (RA) No. 9513:[4] *first,* the production of the Department of Energy and the Board of Investments Certificates of Registration; and *second,* the purchases are needed for the development, construction, and installation of the plant facilities of Renewable Energy (RE) Developers and the whole process of exploration and development of RE sources up to its conversion into power. Thus, to refund input VAT on its local purchases of goods, properties, and services, petitioner must show that its local purchases do not fall under Section 15(g) of RA No. 9513. This is because it is only then that its local suppliers may legally shift or pass VAT to petitioner.

Following said premise, the Court ruled that petitioner is not entitled to its refund claim of input VAT on local purchases of fuel and spare parts, to the extent of ₱48,061.49, because it failed to point out if these purchases were *not* needed for the development, construction, and installation of the plant facilities of RE Developers and the whole process of exploration and development of RE sources up to its conversion into power. On the other hand, petitioner is entitled to refund of unutilized input VAT to the extent of ₱4,128,580.59, which corresponds to the local purchases of goods, properties and services not needed for the development, construction and installation of its plant facilities and the whole process of exploring and developing renewable energy sources up to its conversion into power.

In his Motion, respondent reiterates his arguments that petitioner is not the proper party to seek the refund. For him, no output tax should be shifted to or passed on to RE Developers, such

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[4] Renewable Energy Act.

as petitioner, on its purchases of local supply of goods and services needed for the development, construction, and installation of their plant facilities.

Respondent also contends that petitioner's judicial claim for refund should be denied for its failure to prove that: (1) the input VAT it is claiming as refund remained unutilized and was not carried over to the succeeding periods; and, (2) there was direct attributability between the input VAT on purchases and its zero-rated sales for the 1st to 4th quarters of calendar year 2018.

In refutation, petitioner counters that: (1) the BIR erred in arguing its alleged lack of legal standing to pursue the claim for refund; and, (2) it demonstrated compliance with all the requisites for the grant of refund under Section 112(A) and (C) of the 1997 National Internal Revenue Code (NIRC), as amended to the extent of ₱4,128,580.59.

The Motion lacks merit.

Save for the issue on direct attributability of input VAT and petitioner's zero-rated sales raised by respondent in his Motion, the contentions the latter advanced therein were already passed upon by the Court in the assailed Decision. There is no need to "cut and paste" pertinent portions of the Decision, or re-write the *ponencia* in accordance with the outline of the instant motion.[5]

Respondent is mistaken in arguing that petitioner failed to prove that the input VAT sought to be refunded is directly attributable to its zero-rated sales.

Section 112(A)[6] of the NIRC of 1997, as amended, does not require that the input taxes must be directly attributable to zero-rated

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[5] See *Social Justice Society (SJS) Officers, et al. v. Lim,* G.R. Nos. 187836 & 187916, March 10, 2015.

[6] 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 before the same can be a subject of a claim for refund. *Commissioner of Internal Revenue v. Cargill Philippines, Inc.*[7] *("Cargill")* is instructive:

> **Evidently, contrary to petitioner's contention, the law does not require direct attributability of the input VAT from the purchase of goods to the finished product whose sale is zero-rated, in order for such input VAT to be refundable.** *Ubi lex non distinguit nec nos distinguere debemos.* When the law has made no distinction, the courts ought not to recognize any distinction.
>
> **Thence, it suffices that the purchase of goods, properties, or services upon which the input VAT is based, can be attributed to the zero-rated sales.** This conclusion is further bolstered by Section 110(A)(l) of the Tax Code, which explicitly sets forth the sources of creditable input VAT:
>
> SECTION 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

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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 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. (Boldfacing supplied)

7 G.R. Nos. 255470-71. January 30, 2023.

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code, except automobiles, aircraft and yachts.

(b) Purchase of services on which a value-added tax has been actually paid.

Verily, the law does not limit itself to purchases of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production.[8]

Following *Cargill*, the grant of refund of valid input VAT, attributable to valid zero-rated sales, to the extent of ₱4,128,580.59, in petitioner's favor is proper irrespective of whether the input taxes claimed as refund is directly attributable to its zero-rated sales. As such, the Court finds no compelling reason to reconsider, modify or even reverse the assailed Decision.

WHEREFORE, respondent's Motion for Partial Reconsideration (*Re: Decision promulgated on 18 January 2024*), filed on February 7, 2024 is **DENIED,** for lack of merit.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

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8 Boldfacing supplied.