REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AIR LIQUIDE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8017

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

APR 06 2018
4:28 p.m.

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AMENDED DECISION

MINDARO-GRULLA, *J.*:

For resolution are the following:

1. respondent's **Motion for Partial Reconsideration**, filed on December 27, 2017 with petitioner's **Comment/Opposition (Re: BIR's Motion for Partial Reconsideration dated 27 December 2017),** filed on January 18, 2018; and

2. petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated 07 December 2017)**, filed on December 27, 2017 without respondent's comment as per Records Verification dated December January 31, 2018.

Both parties seek reconsideration of this Court's Amended Decision dated December 7, 2017, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱3,827,145.72** in favor of Air Liquide Philippines, Inc., representing its unutilized excess input VAT for the fourth quarter of CY 2007.
>
> **SO ORDERED**."

In the Amended Decision, the Court ruled that petitioner has sufficiently proven its entitlement to refund/ issuance of a tax credit certificate in the amount of ₱3,827,145.72 representing its unutilized excess input VAT for the fourth quarter of CY 2007 which is attributable to its zero-rated sales for the same period.

Respondent's Motion for Partial Reconsideration

Respondent argues that the Court erred in ruling that the amount of ₱3,827,145.72 is directly attributable to petitioner's zero-rated sales.

Respondent states that Section 112 of the National Internal Revenue Code (NIRC) of 1997 uses the word directly attributable and not the word entirely attributable. Thus, he alleges that it is erroneous that the remaining input tax after allocation is directly attributable to petitioner's zero-rated sales.

Respondent further contends that it does not necessarily follow that when a taxpayer has zero-rated sales, all its remaining input tax after allocation is automatically directly attributable to its zero-rated sales. The phrase directly attributable means arising from a particular source or cause.

Respondent avers that the input tax must come from purchases of goods and services that form part of the finish product of the taxpayer. Allegedly, the law uses the word "directly" which means that the connection between the purchases and the finished product

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is "concrete" and not "imaginary" or "remote" and that there is nothing in the Court's Decision explaining the evidence showing the direct connection of the purchases or input tax to the finished product which sale is zero-rated.

On the other hand, petitioner argues that the law does not require a "direct connection" or a one-to-one correspondence between the domestic purchases and the zero-rated sales. Section 112(A) clearly allows a proportionate allocation if the "input tax due or paid cannot be directly and entirely attributed" to the individual taxable, exempt, or zero-rated sales.

Petitioner further alleged that the function of the allocation under Section 112(A) of the Tax Code is precisely to apportion the input VAT amount among a taxpayer's taxable, exempt and zero-rated sales so that only the input VAT properly attributable to the zero-rated sales will be refunded. After allocation, parties will be guided as to the percentage of input VAT attributable to the zero-rated sales.

Moreover, as to respondent's allegation that petitioner failed to present evidence to support its claim, petitioner maintains that in the proceedings with this Court, petitioner presented competent evidence to show its compliance with the requirements to prove its entitlement to a refund/tax credit of unutilized input VAT under Section 112(A) of the Tax Code.

Respondent's contention is devoid of merit.

Section 112 of the NIRC of 1997, as amended, does not require the input taxes subject of the claim be directly attributable to zero-rated sales. As a matter of fact, the provision allows allocation of input taxes in case the same are not directly and entirely attributed to any of the 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:

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> x x x *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. *(Emphasis supplied)*

The "creditable input tax due or paid attributable to such sales" referred above is not limited to those input taxes on purchases which form part of the finished product.

Under Section 4.110-1 of Revenue Regulations (RR) No. 16-05, as amended, implementing Section 110(A) of the NIRC of 1997, as amended, "Input tax" means the VAT due or paid by a VAT-registered person on importation of goods or local purchases of goods, properties, or services, including lease or use of properties, **in the course of his trade or business**. It shall also include the transitional input tax and the presumptive input tax determined in accordance with Sec. 111 of the NIRC of 1997, as amended.

Section 110(A) herein enumerates the transactions upon which the related input tax may be claimed as tax credits as follows:

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

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> (2) The input tax on domestic purchase or importation of goods or properties by a VAT-registered person shall be creditable:
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> > (a) To the purchaser upon consummation of sale and on importation of goods or properties; and
> >
> > (b) To the importer upon payment of the value-added tax prior to the release of the goods from the custody of the Bureau of Customs.
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> *Provided,* That the input tax on goods purchased or imported in a calendar month for use in trade or business for which deduction for depreciation is allowed under this Code, shall be spread evenly over the month of acquisition and the fifty-nine (59) succeeding months if the aggregate acquisition cost for such goods, excluding the VAT component thereof, exceeds One million pesos (P1,000,000): *Provided, however,* That if the estimated useful life of the capital good is less than five (5) years, as used for depreciation purposes, then the input VAT shall be spread over such a shorter period: *Provided, finally,* That in the case of purchase of services, lease or use of properties, the input tax shall be creditable to the purchaser, lessee or licensee upon payment of the compensation, rental, royalty or fee.

Clearly, input taxes arising from the aforementioned transactions and which are evidenced by VAT invoices (in cases of purchases of goods) and official receipts (in cases of purchases of services) may be claimed as tax credits provided that the same were incurred or paid in connection with the taxpayer's trade or business whether directly or indirectly.

Considering the foregoing, the Court finds respondent's Motion for Partial Reconsideration bereft of merit.

Petitioner's Motion for Partial Reconsideration

Disallowed Sales of Goods to MME Technologies, Inc. – ₱1,400,173.26

In the assailed Decision, the Court disallowed petitioner's sales of goods to MME Technologies, Inc. on the ground that no PEZA Certification for 2007 VAT zero-rating of MME's transaction with its local suppliers of goods, properties and services was issued, as indicated in the PEZA letter dated December 7, 2010 (Exhibit "Y-5").

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Moreover, while it was noted that MME's PEZA registration date was November 25, 1999, the same is not indicative of the fact that the said entity was PEZA registered during the subject period of claim.

Petitioner submits that the said ruling is a reversible error, citing Rule 131, Section 3 of the Rules of Court, which provides:

> "**Sec. 3**. *Disputable presumptions.* – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx xxx xxx
>
> (ee) That a thing once proved to exist continues as long as is usual with things of that nature; xxx"

Petitioner argues that since MME was PEZA-registered in 1999, as certified by the PEZA in 2010 (Exhibit "Y-5"), there arises the disputable presumption that its registration continues to exist from 1999 through 2010. Since the presumption was never contradicted, it was an error not to consider MME as duly registered with the PEZA in 2007.

We are not persuaded.

In one case, the Supreme Court defined disputable presumptions as species of evidence that may be accepted and acted on where there is no other evidence to uphold the contention for which it stands or one which may be overcome by other evidence.[1] The presumption prevails until it is overcome by no less than clear and convincing evidence to the contrary.[2]

Petitioner's contention that there arises the disputable presumption that MME's registration continues to exist from 1999 through 2010 can be controverted by other evidence. It is clear from the Letter reply of PEZA to petitioner (Exhibit "Y-5"), that no 2007 VAT-Zero rating certification was issued to MME in connection with petitioner's VAT claims for the year 2007.

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[1] *People vs. De Guzman*, G.R. No. 106025, February 9, 1994.
[2] *Bustillo, et al. vs. People of the Philippines*, G.R. No. 160718, May 12, 2010.

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Let it be stressed that the instant case is a claim for refund and it is a hornbook rule that petitioner (taxpayer) has the burden of proof to show that it is entitled thereto. It has the duty to present sufficient evidence to support its claim and not merely rely on respondent's non-submission of rebuttal evidence; otherwise the Court has no other recourse than to deny its claim.

Disallowed Sales of Goods without proof that customers were PEZA or SBMA-registered entities or BOI 100% exporters – ₱1,797,874.37

The Court likewise disallowed petitioner's sales of goods without proof that the corresponding customers were PEZA or SBMA registered entities or BOI 100% exporters during the fourth quarter of CY 2007 in the total amount of ₱1,797,874.37, broken down as follows:

Exhibit	**Invoice No.**	**Customer Name**	**Amount (in Php)**
For the month of October			
3177	87966	TST, Inc.	₱ 530,519.00
3179	86952	TST, Inc.	26,984.40
3178	88016	TST, Inc.	36,400.00
3180	87374	Twin V Tech Systems, Inc.	420.00
Subtotal			*594,323.40*
For the month of November			
3602	88845	NSG Micro Optics Phils., Inc.	1,750.00
3725	88480	Pilipinas Shell Petroleum Corp.	14,624.00
3837	88993	TST, Inc.	542,214.65
3839	88066	TST, Inc.	26,369.85
3838	89044	TST, Inc.	33,600.00
Subtotal			*618,558.50*
For the month of December			
4230	89435	NSG Micro Optics Phils., Inc.	1,500.00
4459	89944	TST, Inc.	524,237.07
4461	89095	TST, Inc.	25,655.40
4460	89997	TST, Inc.	33,600.00
Subtotal			*584,992.47*
Total			**₱1,797,874.37**

In its motion, petitioner contends that assuming arguendo that certain customers do not have corresponding certifications of PEZA or SBMA registrations; such does not automatically warrant the

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disallowance of the sales to these customers. The operative fact is that the customer is located in the Export Processing Zone (EPZ).

Citing the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue* (G.R. No. 190506, June 13, 2016), petitioner avers that in the said case, Coral Bay Nickel Corporation, an ECOZONE-located enterprise, was deemed already VAT-exempt even before it obtained its PEZA registration, for the reason that the ECOZONE is a foreign territory, consistent with the Cross Border Doctrine and the Destination Principle. Hence, following the same reasoning, petitioner maintains that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE-located enterprise shall be subject to VAT at zero percent (0%) rate, even in the absence of a certificate of PEZA-registration.

Again, we are not persuaded.

Without the corresponding PEZA/SBMA registration certificates of petitioner's clients, the sales invoices submitted by petitioner are insufficient to prove that the latter's goods were actually sold to ECOZONE-located entities.

While the names, addresses and PEZA/SBMA Registration Nos. of petitioner's clients were indicated in the supporting sales invoices, however, this information can only be verified through the presentation of the corresponding PEZA/SBMA Registration Certificates.

Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts.[3] It is also well settled that in civil cases, the burden of proof is on the plaintiff to establish his case by a preponderance of evidence. If the plaintiff claims a right granted or created by law, the same must be proven by competent evidence. The plaintiff must rely on the strength of his own evidence and not on the weakness of that of his opponent[4].

Nonetheless, as regards the disallowance of petitioner's sales to "TST, Inc.", petitioner pointed out that the PEZA certification of "TST,

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[3] *Asian Construction and Development Corp. vs. Tulabut,* G.R. No. 161904, April 26, 2005.
[4] *Umpoc vs. Mercado,* G.R. No. 158166, January 21, 2005.

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Inc." is Exhibit "LLLL-8-59", which was issued in 2007 under the name of TEMIC SEMICONDUCTOR TEST, INC. (TSTI).

A scrutiny of the supporting invoices issued under "TST, Inc." shows that the same is located in Carmelray Industrial Park I which is the same as that indicated in the PEZA certification marked as Exhibit "LLLL-8-59". Thus, it can be concluded that TST, Inc. and TEMIC SEMICONDUCTOR TEST, INC. are one and the same entity. Accordingly, petitioner's sales of goods to TST, Inc. in the amount of ₱1,779,580.37, broken down below, shall be allowed VAT zero-rating:

Exhibit	**Invoice No.**	**Customer Name**	**Amount (in Php)**
For the month of October			
3177	87966	TST, Inc.	₱ 530,519.00
3179	86952	TST, Inc.	26,984.40
3178	88016	TST, Inc.	36,400.00
Subtotal			*593,903.40*
For the month of November			
3837	88993	TST, Inc.	542,214.65
3839	88066	TST, Inc.	26,369.85
3838	89044	TST, Inc.	33,600.00
Subtotal			*602,184.50*
For the month of December			
4459	89944	TST, Inc.	524,237.07
4461	89095	TST, Inc.	25,655.40
4460	89997	TST, Inc.	33,600.00
Subtotal			*583,492.47*
Total			**₱1,779,580.37**

Consequently, petitioner's refundable excess input VAT attributable to its valid zero-rated sales for the fourth quarter of CY 2007 is recomputed as follows:

Input VAT Attributable to the Declared Zero-Rated Sales/Receipts		₱ 9,779,614.97
Less: Net Output VAT Payable		4,456,873.82
Excess Input VAT Attributable to the Declared Zero-Rated Sales/Receipts		₱ 5,322,741.15
Multiply by Properly Substantiated Zero-Rated Sales		
Zero-Rated Sales Previously Allowed by this Court	₱148,362,999.86	
Add: Sales made to TST, Inc.	**1,779,580.37**	x 150,142,580.23
Divide by Declared Zero-Rated Sales/Receipt per VAT Return		÷ 206,341,201.16
Excess Input VAT Attributable to Properly Substantiated Zero-Rated Sales		**₱ 3,873,051.46**

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WHEREFORE, respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit, while petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated 07 December 2017)** is **PARTIALLY GRANTED**.

Accordingly, the Amended Decision dated December 07, 2017 should be modified to read as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱3,873,051.46**, in favor of Air Liquide Philippines, Inc., representing its unutilized excess input VAT for the fourth quarter of CY 2007.
>
> **SO ORDERED**."

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

J.C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

J. C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice