**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

# ***EN BANC***

**YILAN HOLDINGS CO., INC.,**
*Petitioner,*

**CTA *EB* NO. 2307**
(CTA Case No. 9665)

Present:

**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**UY,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,**
**MODESTO-SAN PEDRO,**
**REYES-FAJARDO,** *and*
**CUI-DAVID,** *JJ.*

*-versus-*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

Promulgated:
FEB 2 8 2022 2:10 pm

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## DECISION

**MANAHAN, J.:**

Before the Court *En Banc* is a *Petition for Review* assailing the Decision and Resolution of the Court of Tax Appeals (CTA) 3rd Division, which denied petitioner's claim for refund of input value-added tax (VAT) arising from the domestic purchase of taxable goods and services, capital goods, and domestic purchases of goods other than taxable goods, allegedly attributable to effectively zero-rated sales. The claim amounts to Php9,642,857.14 covering the period January 1, 2015 to March 31, 2015.

### FACTS

The CTA 3rd Division narrated the antecedents, as follows:

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Petitioner Yilan Holdings Co. Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, registered with the Securities and Exchange Commission (SEC) with Company Reg. No. CS201503624. Its principal office is located at Unit 1807 Cityland Condominium 10 Tower 1, H.V. Dela Costa Street, Salcedo Village, Bel-Air, City of Makati. It is registered with the Bureau of Internal Revenue (BIR) under Taxpayer Identification No. (TIN) 008-967-576-00000.

On the other hand, respondent Commissioner of Internal Revenue is vested with authority to exercise the functions of said office, including *inter alia*, the power to refund any internal revenue tax erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, or of VAT input taxes attributable to zero-rated revenue, and holding office at the BIR National Office Building, Diliman, Quezon City, Metro Manila.

On March 17, 2015, petitioner entered into a *Contract to Sell*, wherein J.Y. & Sons Realty Co. Inc. agreed to sell to petitioner two (2) parcels of land, covered by Transfer Certificate of Title (TCT) Nos. T-768086 and 057-201405108, both located at Barangay Langkaan, First Cavite Industrial Estate (FCIE), Dasmariñas, Cavite, with a total area of 17,963, more or less, in the amount of P90,000,000.00 inclusive of VAT. This transaction was covered by Sales Invoice No. 1005 dated March 27, 2015, and Official Receipts Nos. 20596 and 21596 dated March 27, 2015 and May 10, 2016, respectively, all issued by J.Y. & Sons Realty Co. Inc.

Subsequently, petitioner and J.Y. & Sons Realty Co. Inc. executed the *Deed of Absolute Sale* dated May 26, 2016, covering the said parcels of land. Eventually, petitioner was issued TCT Nos. 057-2016070642 and 057-2016070643, covering the same property.

Sometime in March 2015, petitioner entered into a *Contract of Lease* with Chuanshun Electric (Phils.), Inc., allegedly an Ecozone Export Enterprise at the FCIE – Special Economic Zone under Certificate of Registration No. 10-87 issued by the Philippine Economic Zone Authority. The said *Contract* covers the two (2) parcels of land, which petitioner purchased from J.Y. & Sons Realty Co. Inc., with a lease term of twenty-five (25) years commencing from March 1, 2015 up to February 28, 2040, and at a monthly rental fee of P22.00 per square meter or a total of P395,186.00, subject to escalation of five percent (5%) on the 6th year and every five (5) years thereafter, payable on or before the 1st five days of the month without need of demand.

In May 2016, the said *Contract of Lease* was amended, revising the monthly rental fee to P44.00 per square meter or

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> a total of P790,372.00, but maintaining the same escalation clause and period for the payment thereof without need of demand. The said new rate shall take effect on June 1, 2016.
>
> Petitioner filed its Quarterly VAT Return for the period January 1, 2015 to March 31, 2015 on June 22, 2016.
>
> On March 31, 2017, petitioner filed with the BIR – Revenue District Office (RDO) No. 50, South Makati, an *Application for Tax Credits/Refunds* (BIR Form No. 1914), representing VAT in the amount of P9,642,857.14 for the period January 1, 2015 to March 31, 2015, the legal basis therefor is "*Sec. 4.112-1 Revenue Regulations 6-2005*".[1]

On August 25, 2017, petitioner filed its Petition for Review with the CTA, alleging the BIR's inaction on its claim for refund. After trial, the CTA 3rd Division rendered the assailed Decision dated November 7, 2019, denying the claim for refund, as follows:

> **WHEREFORE**, all the foregoing considered, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**.[2]

Petitioner's *Motion for Reconsideration (of the Decision dated November 7, 2019)*, filed on November 28, 2019, was likewise denied in the Resolution[3] dated June 19, 2020.

The CTA 3rd Division found that petitioner failed to prove that it had zero-rated or effectively zero-rated sales for January 1, 2015 to March 31, 2015. The CTA 3rd Division stated that petitioner did not present any evidence showing that it issued VAT official receipts for the lease transactions. Petitioner also did not declare any sales for the period of January 1, 2015 to March 31, 2015 in its Quarterly VAT Return for the said period. The CTA 3rd Division further stated that petitioner was not able to show that its application for refund was filed within two (2) years after the close of the taxable quarter when the sales were made, since petitioner did not report any sales on its January 1, 2015 to March 31, 2015 Quarterly VAT Return.

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[1] EB Docket, CTA EB No. 2307, Division Decision dated November 7, 2019, pp. 19-21.
[2] EB Docket, Division Decision dated November 7, 2019, p. 32.
[3] EB Docket, pp. 35-37.

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On July 27, 2020, petitioner filed its *Motion for Extension of Time to File Petition for Review*[4] with the CTA *En Banc*, praying for an additional fifteen (15) days from July 28, 2020, or until August 12, 2020, within which to file its petition for review. The extension was granted in the Minute Resolution dated July 28, 2020.[5]

On August 11, 2020, petitioner filed *via* email its Petition for Review assailing the above Decision and Resolution issued by the CTA 3rd Division.

Despite notice,[6] respondent Commissioner of Internal Revenue (CIR) failed to comment, per Records Verification[7] dated January 21, 2021.

Thus, the case was deemed submitted for decision on February 17, 2021.[8]

## ISSUES

Petitioner assigns the following errors to the CTA 3rd Division:

> With all due respect, the Honorable CTA, Third Division erred when it ruled that Petitioner failed to substantiate its effectively zero-rated sales for the first quarter of 2015, thus, the claimed input VAT cannot be refunded.
>
> With all due respect, the Honorable CTA, Third Division erred when it ruled that Petitioner failed to show compliance that the latter filed its claim or Application for Tax Refund with the BIR within two (2) years after close of the taxable quarter when the sales were made.
>
> With all due respect, the Honorable CTA, Third Division erred when it ruled that Petitioner failed to prove its entitlement to its refund claim in the amount of Php9,642,857.14.[9]

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[4] EB Docket, pp. 1-3.
[5] EB Docket, p. 4.
[6] EB Docket, Resolution dated September 16, 2020, pp. 40-41.
[7] EB Docket, p. 42.
[8] EB Docket, pp. 44-45.
[9] EB Docket, Petition for Review, p. 10.

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Petitioner argues that it incurred input VAT within the period of January 1, 2015 to March 31, 2015. It also states that it purchased two parcels of land, which were subsequently leased to a PEZA-registered enterprise, under a Contract of Lease. Such lease should be treated as a VAT zero-rated sale. Petitioner also states that it reflected its income from the Contract of Lease "in its subsequent VAT returns". Having earned zero-rated or effectively zero-rated sales, petitioner states that it is entitled to apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales pursuant to Section 112(A) of the 1997 National Internal Revenue Code (NIRC), as amended.

Petitioner further avers that assuming there was no sale for the first quarter, there is no doubt that there was a zero-rated or effectively zero-rated sale for taxable year 2015 which was immediately reported in the following quarter, as evidenced by the Contract of Lease and the VAT return.

Petitioner reiterates that it timely filed its claim for refund.

## RULING OF THE COURT

The Petition for Review is denied.

We affirm the CTA 3rd Division's findings that petitioner's lease transactions involving the two parcels of land may qualify for VAT zero-rating. We quote the CTA 3rd Division's discussion:

> In this case, in arguing that its sale of service (*i.e.*, lease of its property) to Chuanshun Electric (Phils.), Inc. is subject to zero percent (0%) VAT, petitioner invokes Section 3(2)(b) of Revenue Memorandum Circular (RMC) No. 74-99, to wit:
>
> > "SECTION 3. *Tax Treatment of Sales Made By A VAT Registered Supplier From The Customs Territory, To A PEZA Registered Enterprise.* –
> >
> > xxx xxx xxx
> >
> > 3. In the final analysis, **any sale of goods, property or services made by a VAT registered supplier from the Customs**

> **Territory to any registered enterprise operating in the ecozone, regardless of the class or type of the latter's PEZA registration, is actually qualified and thus legally entitled to the zero percent (0%) VAT**. Accordingly, all sales of goods or property to such enterprise made by a VAT registered supplier from the Customs Territory shall be treated subject to 0% VAT, pursuant to Sec. 106(A)(2)(a)(5), NIRC, in relation to the provision of R.A. 7916 and the 'Cross Border Doctrine' of the VAT System.
>
> This Circular shall serve as a sufficient basis to entitle such supplier of goods, property or services to the benefit of the zero percent (0%) VAT for sales made to the aforementioned ECOZONE enterprises and shall serve as sufficient compliance to the requirement for prior approval of zero-rating imposed by Revenue Regulations No. 7-95 effective as of the date of this Circular."

Based on the foregoing, any sale of goods, property, or services made by a VAT-registered supplier from the Customs Territory to any PEZA-registered enterprise is subject to zero-rated VAT. Undoubtedly, this is the prevailing rule regarding such transaction. In fact, such rule was jurisprudentially recognized in the case of *Commissioner of Internal Revenue vs. Seagate Technology (Philippines)*, wherein the Supreme Court made the following pronouncements, *viz*:

> "...the contemporaneous construction of our tax laws by BIR authorities who are called upon to execute or administer such laws will have to be adopted. Their prior tax issuances have held inconsistent positions brought about by their probable failure to comprehend and fully appreciate the nature of the VAT as a tax consumption and the application of the *destination principle*. **Revenue Memorandum Circular No. (RMC) 74-99, however, now clearly and correctly provides that any VAT-registered supplier's sale of goods, property or services from the customs territory to any registered enterprise operating in the ecozone – regardless of the class or type of the latter's PEZA registration – is legally entitled to a zero rate.**"

> On the basis thereof, considering that petitioner is a VAT-registered entity and has leased its parcels of land to a PEZA-registered enterprise, Chuanshun Electric (Phils.), Inc., such sale of service may be treated as subject to VAT at zero percent (0%).[10]

However, despite being entitled to VAT zero-rate, petitioner failed to show proof of VAT zero-rated sales when it failed to present the VAT official receipts issued for such lease transactions.

The entitlement to claim for tax credit or refund of creditable input tax due or paid is conditioned on the existence of zero-rated or effectively zero-rated sales. Section 112(A) and (C) of the NIRC, as amended by Republic Act (RA) No. 9337, provides:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* –
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* – <u>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</u>, 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 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: xxx
>
> (B) xxx xxx xxx
>
> (C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in

[10] EB Docket, Decision dated November 7, 2019, pp. 28-29.

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> support of the application filed in accordance with Subsection (A) hereof.
>
> In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (*Underscoring supplied*)

Thus, it is only when the sales of a VAT-registered person are **zero-rated or effectively zero-rated** that it may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.[11]

Unfortunately, as found by the CTA 3rd Division and upon careful examination of the records, petitioner failed to submit any VAT official receipt for the said lease transactions to prove the existence of its alleged zero-rated or effectively zero-rated sales for January 1, 2015 to March 31, 2015.

All VAT-registered persons are required to comply with the invoicing requirements provided in Section 113 of the 1997 NIRC, as amended by RA No. 9337, which provides:

> SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* –
>
> (A) ***Invoicing Requirements.* – A VAT-registered person shall issue:**
>
> > (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
> >
> > (2) **A <u>VAT official receipt</u> for every lease of goods or properties** and for every sale, barter or exchange of services. (*Emphasis and underscoring supplied*)

To implement Section 113, Section 4.113-1 of RR No. 16-2005 reads:

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[11] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

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SEC. 4.113-1. ***Invoicing Requirements.*** –

(A) **A VAT-registered person shall issue.** –

(1) A VAT invoice for every sale, barter or exchange of goods or properties; and

(2) **A <u>VAT official receipt</u> for every lease of goods or properties**, and for every sale, barter or exchange of services.

VAT invoice/official receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records. (*Emphasis and underscoring supplied*)

Compliance with the invoicing requirements is clearly mandatory, failure to comply therewith is fatal to petitioner's claim for refund. We reiterate the CTA 3rd Division's discussion, as follows:

> In light of the foregoing provisions, as an invoicing requirement under the VAT law, a VAT-registered person, such as petitioner, is mandated to issue a VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> *Apropos*, compliance with all the VAT invoicing requirements provided by tax laws and regulations is mandatory.[12] Thus, the taxpayer claiming the refund must comply with the invoicing and accounting requirements mandated by the NIRC, as well as by revenue regulations implementing them.[13] Such compliance is required to be able to file a claim for input taxes attributable to zero-rated sales.[14]
>
> Without proper VAT official receipt(s) issued to its client, the payment(s) received by petitioner for providing services to PEZA-registered entities cannot qualify for VAT zero-rating. Hence, it cannot claim such sales are zero-rated VAT not subject to output tax.[15] In other words, petitioner

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[12] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[13] *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.
[14] *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[15] *Takenaka Corporation – Philippine Branch v. Commissioner of Internal Revenue*, G.R. No. 193321, October 19, 2016.

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> cannot claim that it had zero-rated or effectively zero-rated sales for the 1st quarter of 2015.
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> Furthermore, it is also noted that the absence of zero-rated or effectively zero-rated sales for the said quarter is bolstered by petitioner's Quarterly VAT Return for the same period filed on June 22, 2016,[16] wherein petitioner did not report any amount of sales.[17]

In a claim for tax refund or tax credit, the applicant must prove not only entitlement to the grant of the claim under substantive law. It must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.[18]

In light of the absence of zero-rated or effectively zero-rated sales, it is unnecessary to discuss petitioner's compliance or non-compliance with the other requirements for this claim for issuance of tax credit certificate or refund of unutilized input VAT.

**WHEREFORE**, the Petition for Review is **DENIED** for lack of merit. The Decision and Resolution of the Court's 3rd Division, dated November 7, 2019 and June 19, 2020, respectively, are **AFFIRMED**.

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

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16 Division Docket, Vol. 2, Exhibit "P-10", p. 561.
17 EB Docket, Decision dated November 7, 2019, pp. 30-31.
18 *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**LANEE S. CUI-DAVID**
Associate Justice

## CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above 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