REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

S&WOO CONSTRUCTION PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9731** Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* *and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 08 2020 9:30 am

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court is respondent's **Motion for Reconsideration (Re: Decision Promulgated 2 March 2020)** filed on June 15, 2020, with petitioner's **Comment/Opposition (to the Motion for Partial Reconsideration filed by Respondent Commissioner of Internal Revenue dated 15 June 2020)** filed on July 6, 2020.

On June 1 2020, a Decision was promulgated by this Court partially granting petitioner's claim for refund of its excess and unutilized input value-added tax (VAT), the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is ordered to refund or issue a tax credit certificate in favor of petitioner the amount of ₱194,165,861.40, representing the latter's unutilized excess input VAT

attributable to its zero-rated sales for the 2nd, 3rd and 4th quarters of CY 2016.

SO ORDERED."

In his Motion, respondent maintains that to allow petitioner to claim the input VAT is tantamount to double recovery and unjust enrichment. While respondent admits that courts are barred under the *business judgment rule* from intruding into the business judgments of corporations when the same are made in good faith, he nonetheless insists that the said rule is not applicable when the exercise thereof would unduly prejudice the interest of the government. Respondent continues that in the present case, petitioner did not remove the input VAT component in the cost of the goods and services which it purchased and procured from its contractors –as such, the entire cost was billed to its client, SEMPHIL.

Moreover, respondent insists that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. He claims that Section 112, in relation to Section 110 of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that for input taxes on purchased of goods to be creditable, they must be a factor in the chain of production. Thus, in order for the input tax to be creditable, it 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 which, as respondent claims, is not present in the present case.

Lastly, respondent cites the oft-repeated rule that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.

On the other hand, in its Comment, petitioner claims that the arguments raised by respondent in his Motion are reiterations of the previous arguments he already raised during trial. In any case, petitioner again explains that the service fees it charged to SEMPHIL are not arbitrary figures but was mutually agreed upon by petitioner and SEMPHIL, as embodied in their Construction Contract Agreement. Petitioner further avers that, if there are questions to the service fees charged by petitioner, it is SEPMPHIL who should raise the same and not respondent, for it is not within the latter's mandate to question business decisions that are valid, lawful and made in good faith.

Lastly, petitioner also claims that it only had zero-rated sales transactions, and in the VAT system, all input VAT will necessarily be attributable to such VAT zero-rated sales transactions.

Accordingly, this Court finds respondent's Motion for Reconsideration bereft of merit.

Again, this Court emphasize that Section 112(A) of the NIRC of 1997, as amended, does not require that the input VAT subject of a claim for refund be directly attributable to zero-rated sales. What it merely requires is a direct or indirect connection with the taxpayer's zero-rated sales, as it allows allocation of input taxes in cases where the same cannot be directly or entirely attributed to any of the sales. The Court *En Banc's* ruling in the case of *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership,*[1] is instructive on the matter, to wit:

> "The CIR clearly misread the law.
>
> Section 112 (A) of the NIRC of 1997, as amended by Republic Act (RA) No. 9337, provides, in part, as follows:
>
>> '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 <u>attributable</u> to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: 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 **<u>cannot be directly and entirely attributed</u> to any**

[1] CTA EB No. 1777 & 1779 (CTA Case Nos. 8082 & 8106), August 1, 2019.

> **one of the transactions**, it shall be allocated proportionately on the basis of the volume of sales: x x x.

> **A plain reading of the foregoing provision would reveal that the law merely states that the creditable input VAT should be *'attributable'* to the zero-rated or effectively zero-rated sales. In other words, nowhere is it stated in the above-quoted Section 112 (A) that the refundable creditable input VAT should be *'directly attributable'* to such sales.** It is elementary that where the law does not distinguish, none must be made. *Ubi lex non distinguit nec nos distingere debemos.*

> **Admittedly, the words *'directly . . . attributed'* were used under the aforequoted provision. However, the said words merely relate to a situation where the creditable input VAT cannot be *'directly . . . attributed'* to any transaction. It does not, in any way, qualify the preceding sentences of the same Section 112 (A) which will have the effect of making the refundable input VAT are only those which are 'directly attributable' to zero-rated or effectively zero-rated sales.**

> **Thus, there is no legal basis for the CIR's stand that the fact of *'direct attributability'* must be established.**" *(Emphases supplied)*

Moreover, this Court categorically ruled in the case of *Rio Tuba Nickel Mining Corp. v. Commissioner of Internal Revenue,*[2] citing its earlier ruling in the case of *Toledo Power Company v. Commissioner of Internal Revenue,*[3] that the NIRC of 1997, as amended, did not limit input taxes to those purchases that only form part of the finished product of the taxpayer, thus:

> "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: ℘

[2] CTA Case No. 9127, August 8, 2019.
[3] CTA Case No. 8792, January 29, 2019.

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) of the NIRC of 1997, as amended, provides that 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.

From the foregoing, it is significant to note that the NIRC did not limit input taxes to those purchases that only form part of the finished product of the taxpayer.

To the extent possible, words must be given their ordinary meaning; this is consistent with the

basic precept of *verba legis*. The word 'attribute,' the adjective form of which is 'attributable,' is defined in the dictionary as 'to explain as to cause or origin,' in other words, 'creditable input tax due or paid *attributable* to such sales' simply means that the input tax is connected with the zero-rated or effectively zero-rated sales.

Hence, 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 (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/expense/cost. However, respondent seem to have confused the phrases 'attributable to such sales' and 'directly and entirely attributed' to mean 'direct costs' which applies to the computation of gross income.

The above interpretation of the phrase '*attributable* to such sales,' to simply mean that the input tax is connected with a taxpayer's zero-rated or effectively zero-rated sales and not to its taxable or exempt sales, is likewise within the context of Section 112(A) of the NIRC of 1997, as amended, taking into consideration the proviso which states 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.' Hence, Section 112(A) of the NIRC of 1997, as amended, provides for a scenario where the taxpayer is engaged in (1) purely zero-rated or effectively zero-rated sales; (2) engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales and the creditable input tax due or paid can be attributed to each of the transactions; and (3) engaged in both zero-rated or effectively zero-

> **rated sales and in taxable or exempt sales but the creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions.**
>
> It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.,* that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning." *(Emphases supplied)*

Therefore, guided by the foregoing disquisition, this Court finds no cogent reason to disturb the conclusion reached in the Decision assailed by respondent.

WHEREFORE, in view of the foregoing, respondent's Motion Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice