REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2190** (CTA Case No. 9417)
	Present:
- versus -	**DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** and **REYES-FAJARDO,** *JJ.*
KURIMOTO (PHILIPPINES) CORPORATION, Respondent.	***Promulgated:*** OCT 19 2021 2:50 p.m.

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DECISION

UY, *J.*:

In the instant *Petition for Review*[1] filed on December 4, 2019 by the Commissioner of Internal Revenue, as petitioner, against Kurimoto (Philippines) Corporation, as respondent, petitioner prays for the reversal and setting aside of the Decision dated June 4, 2019 and Resolution dated October 25, 2019, promulgated by the Special Second Division of this Court, in CTA Case No. 9417, entitled, *"Kurimoto (Philippines) Corporation, Petitioner vs. Commissioner of Internal Revenue, Respondent,"* the dispositive portions of which respectively read as follows:

Decision dated June 4, 2019:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.**

[1] EB Docket, pp. 5 to 18.

Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱8,996,232.52** representing unutilized input taxes attributable to its zero-rated sales for the first and second quarters of CY 2014.

SO ORDERED."

Resolution dated October 25, 2019:

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

SO ORDERED."

THE FACTS

Petitioner is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the 1997 National Internal Revenue Code (NIRC), as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Kurimoto (Philippines) Corporation (KPC) is a domestic corporation duly organized and validly existing under the laws of the Philippines, with principal office at the Pacific Star Building, Makati Ave. cor. Sen. Gil Puyat Ave., Makati City. It is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Tax Identification No. 007-889-234-000.

On March 16, 2016, KPC filed an Application for Tax Credits/Refunds with the BIR Revenue District Office (RDO) No. 49 in the amount of ₱11,797,880.86 for the period covering January 31, 2014 to June 30, 2014.

Thereafter, the CIR issued Letter of Authority No. eLA201200034645/LOA-049-2016-00000005 dated April 27, 2016, authorizing Revenue Officer Myrna Jao and Group Supervisor Marilyn Dumapias of RDO No. 049 — North Makati to examine KPC's books of accounts and other accounting records for VAT for the period covering January 1, 2014 to June 30, 2014.

In the letter dated June 23, 2016, which was received by KPC on July 7, 2016, Deputy Commissioner of the Operations Group Nelson M. Aspe partially granted KPC's application and recommended the refund of the amount of ₱236,940.00 net of disallowances.

On August 8, 2016, KPC filed its *Petition for Review* before the Court in Division, docketed as CTA Case No. 9417, praying that the Court reverse and set aside the partial denial of the claim rendered by the CIR, as well as to issue a tax credit certificate in the amount of ₱11,797,880.86, representing excess/unutilized input taxes attributable to zero rated sales for the 1st and 2nd quarter of 2014. In its Petition, KPC argued that: 1) it complied with all the necessary requirements provided under RMC No. 54-2014; and 2) it is entitled to its claim for VAT refund.

The CIR filed his *Answer* in CTA Case No. 9417 on October 5, 2016, interposing, among others, the following Special and Affirmative Defenses:

1) KPC's alleged claim for issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the CIR;

2) taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable;

3) KPC's claim for refund or issuance of tax credit certificate, if any, in the amount of ₱11,797,880.86, representing alleged unutilized/excess input VAT for the first and second quarters 2014, were not substantiated by proper documents, such as sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to Section 113 and 237 of the 1997 Tax Code;

4) in an action for refund/credit, the burden of proof is on the taxpayer to establish its right to claim refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

5) it is incumbent upon KPC to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund; and

6) claims for refund are construed strictly against the taxpayer since the same partakes the nature of exemption from taxation and as such, they are looked upon with disfavor.

After the pre-trial conference held on December 1, 2016, the parties submitted their *Joint Stipulation of Facts and Issues* on February 8, 2017. Subsequently, the Court issued a *Pre-Trial Order* on February 15, 2017, adopting the parties' joint stipulations and terminating the pre-trial.

During trial, KPC presented the following witnesses: 1) Miel O. Golla, the head of KPC's Accounting Department, and 2) Atty. Ma. Cecilia C. Katigbak, the Court-commissioned ICPA, as its witnesses.

KPC filed its *Formal Offer of Exhibits (with Motion to Allow the Independent Certified Public Accountant to Correct her Sub-Markings in Exhibit "P-34"; or in the Alternative, the Setting of a Commissioner's Hearing for Purposes of Correcting the Sub-Markings of Exhibit P-34)* on July 20, 2017.

On January 24, 2018, the Court denied all of KPC's exhibits for failure to comply with Sections 3 (b), 3 (c) and 4 (a) of A.M. No. 12-8-8-SC or the Judicial Affidavit Rule, and for failure to identify.

On the other hand, the CIR manifested that he will no longer be presenting any evidence, since the BIR revenue examiner who handled KPC's application for refund has no final report.

KPC filed an *Omnibus Motion (Motion for Reconsideration with Motion to Admit and/or Motion to Set Case for Hearing)* on February 9, 2018. In the Resolution dated March 26, 2018, the Court granted KPC's *Motion for Reconsideration with Motion to Admit*, while its *Motion to Set Case for Hearing* was deemed moot. Accordingly, all of KPC's formally offered exhibits were admitted by the Court.

In view of the *Memorandum [for the Petitioner]* filed on May 28, 2018, and the Records Verification issued by the Court's Judicial Records Division on May 30, 2018, stating that the CIR failed to file a memorandum, the case was deemed submitted for decision on June 7, 2018.

In the assailed Decision[2] dated June 4, 2019, the Court in Division partially granted KPC's Petition for Review. Accordingly the CIR was ordered to issue a tax credit certificate in favor of KPC in the reduced amount of ₱8,996,232.52 representing unutilized input taxes attributable to its zero-rated sales for the first and second quarters of CY 2014.

[2] EB Docket, pp. 20 to 43.

The CIR filed his *Motion for Partial Reconsideration* on June 20, 2019, to which KPC filed its *Comment to Respondent's Partial Motion for Reconsideration* on July 29, 2019.

In the assailed Resolution[3] dated October 25, 2019, the Court in Division denied the Motion for Reconsideration for lack of merit.

Undaunted, the CIR filed a *Motion for Extension of Time to File Petition for Review* on December 2, 2019.[4] In the Resolution[5] dated December 4, 2019, the subject Motion was granted and the CIR was given a final and non-extendible period of fifteen (15) days from November 21, 2019, or until December 6, 2019, within which to file his Petition for Review.

Thereafter, the CIR filed the instant *Petition for Review* on December 4, 2019.[6] In the Resolution[7] dated February 5, 2020, KPC was directed to file its Comment to the Petition for Review, within ten (10) days from notice. KPC, however, failed to file its Comment, as per Records Verification[8] dated October 8, 2020. Thereafter, the Petition for Review was deemed submitted for Decision on October 22, 2020.[9]

Hence, this Decision.

ISSUE

The sole issue for resolution raised by the CIR is whether or not the Court in Division erred in partially granting KPC's claim for refund in the reduced amount of ₱8,996,232.52, representing unutilized input taxes attributable to its zero-rated sales for the first and second quarters of CY 2014.

Petitioner's arguments:

The CIR contends that KPC's sales of services to Kurimoto Ltd. do not qualify as zero-rated sales, and must be subject to 12% VAT. Allegedly, the transactions by and between KPC and Kurimoto Ltd.

[3] EB Docket, pp. 45 to 52.
[4] EB Docket, pp. 1 to 2.
[5] EB Docket, pp. 4.
[6] EB Docket, pp. 5 to 18.
[7] EB Docket, pp. 71 to 72.
[8] EB Docket, p. 80.
[9] EB Docket, pp. 82 to 83.

are clearly intended to establish a continuous business in the Philippines.

Allegedly, it is apparent that the non-resident foreign corporation that rendered services to KPC in the Philippines and whose services were subjected to VAT was also Kurimoto Ltd., to whom KPC claims to have made its zero rated sales. Thus, KPC failed to comply with one of the requirements that the recipient of services must be doing business outside the Philippines. Since the two entities are both doing business in the Philippines, their transaction falls squarely under Section 108(A) governing domestic sale or exchange of services, which is subject to regular VAT.

In addition, the CIR avers that KPC's sales of services to THPAL, a PEZA-registered enterprise, does not qualify as zero-rated sales but subject to 12% VAT. To qualify as zero-rated sales, the PEZA-registered enterprise to whom KPC sells its services, should have availed of the 5% preferential tax, otherwise, they are subject to 12% VAT under Section 108 of the NIRC of 1997, as amended.

The CIR likewise contends that the Exhibits of KPC should not be given any probative value for being hearsay evidence. Allegedly, respondent failed to present credible and competent witnesses who had a hand in the preparation of respondent's exhibits to support its allegation.

Finally, according to the CIR, tax refunds are in the nature of exemptions and as such, are regarded as in derogation of sovereign authority. Thus, they should be construed *strictissimi juris* against the person or entity claiming the exemption.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* lacks merit.

KPC's sale of services to Kurimoto Ltd., a non-resident foreign corporation

Notably in the assailed Decision dated June 4, 2019, KPC's refund claim pertaining to its sales of services to Kurimoto Ltd. was denied in totality.

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Surprisingly however, the CIR still assails such denial, if only to invoke another ground to deny said refund claim.

Although at first blush, the Court *en banc* found it unnecessary to delve into the matter for being moot as the conclusion sought to be arrived at is the same, which is the denial of the said refund claim, nevertheless, We deemed it necessary to look into the Court in Division's factual and legal basis for the said denial, in order to achieve a thorough review of the assailed Decision dated June 4, 2019 and Resolution dated October 25, 2019.

In the instant Petition for Review, the CIR contends that KPC's sales of services to Kurimoto Ltd. do not qualify as zero-rated sales, but should be subject to 12% VAT. To be specific, the CIR avers that KPC failed to prove that the recipient of services must be doing business outside the Philippines.

We do not agree with the CIR's contention.

It is Our considered opinion that the sales of services to Kurimoto Ltd. may qualify for VAT zero-rating provided it complies with the pertinent provisions specified in ***Section 108 (B) of the NIRC of 1997, as amended***, considering that the transaction between KPC and Kurimoto, Ltd. pertains to sales of services other than processing, manufacturing or repacking goods for other persons, which are subject to zero-percent (0%) VAT, to wit:

> "**SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —**
>
> xxx xxx xxx
>
> The phrase 'sale or exchange of service' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, x x x.
>
> xxx xxx xxx
>
> *(B) Transactions Subject to Zero Percent (0%) Rate.* — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the

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> Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);"** *(Emphases and underscoring supplied.)*

Based on the aforequoted Section 108 (B) (2) of the NIRC of 1997, as amended, the following essential elements must be present in order that the subject sale of services shall be subject to zero-percent (0 %) VAT, to wit:

1) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines, when the services were performed;[10]

2) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules;[11]

3) The services fall under any of the categories under Section 108 (B) (2),[12] or simply, the services rendered should be other than "processing, manufacturing or repacking goods";[13] and

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[10] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

[11] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*

[12] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005

[13] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra.*

4) The services must be performed in the Philippines[14] by a VAT-registered person.

With regard to the first element, it is imperative to establish that the recipient of the service is a "non-resident foreign corporation," and not merely a "foreign corporation."[15] Moreover, it must be proven that the service-recipient must not be doing business in the Philippines.[16]

As mentioned earlier, it is the CIR's contention that KPC failed to prove that its service-recipient, Kurimoto Ltd., is doing business outside the Philippines.

In the assailed Decision dated June 4, 2019 however, the Court in Division found that KPC was able to prove that Kurimoto Ltd. is a non-resident foreign corporation doing business outside the Philippines during CY 2014, based on the following documents, to wit:

1) Authenticated and Consularized Articles of Incorporation of Kurimoto Ltd.;[17]

2) SEC Certification of Non-Registration of Kurimoto Ltd.;[18]

3) Certificate of Withdrawal of License of a Foreign Corporation issued by the SEC dated June 27, 2012;[19] and

4) SEC Certification of Corporate Filing / Information dated August 3, 2016 confirming the issuance of the *Certificate of Withdrawal of License of a Foreign Corporation* to Kurimoto Ltd. on July 6, 2011.[20]

After a careful review of the nature and purposes for the presentation of the aforementioned documentary evidence, We affirm the findings of the Court *a quo* that the said documents are sufficient to establish that KPC's service-recipient, Kurimoto Ltd., is a non-

[14] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra; Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch), supra.*
[15] *Accenture, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 190102, July 11, 2012.
[16] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007.
[17] Exhibit "P-16," Division Docket (CTA Case No. 9417), Vol. 1, p. 448 to 501.
[18] Exhibit "P-17," Division Docket (CTA Case No. 9417), Vol. 1, p. 502.
[19] Exhibit "P-18," Division Docket (CTA Case No. 9417), Vol. 1, p. 470.
[20] Exhibit "P-33," ICPA Report, Folder 2, p. 61.

resident foreign corporation, which is not doing business in the Philippines.

To be specific, the Authenticated and Consularized Articles of Incorporation of Kurimoto Ltd.[21] proffered by KPC constitutes sufficient proof that Kurimoto Ltd. is a non-resident foreign corporation located at Osaka City, Japan.

In addition, SEC *Certification of Non-Registration of Company*[22] shows that the records of the SEC do not show the registration of *Kurimoto Ltd. Japan* as a corporation or as a partnership. The registered company name, however, is similar to the entity of *Kurimoto Ltd.* with SEC Reg. No. A199800746.

Meanwhile, the *Certificate of Withdrawal of License of a Foreign Corporation*[23] issued by the SEC, unequivocally shows that the petition of Kurimoto Ltd. with SEC Registration No. A1998-746, for the withdrawal of its license to do business in the Philippines as a **branch office** was approved on June 27, 2012. Finally, the SEC Certification of Corporate Filing/Information[24] dated August 3, 2016 confirms the issuance of the *Certificate of Withdrawal of License of a Foreign Corporation* to Kurimoto Ltd. In other words, the subject Certificates show that Kurimoto Ltd. is no longer registered to do business in the Philippines.

Taken together, the foregoing documents are sufficient to establish that Kurimoto Ltd. is a non-resident foreign corporation, which is not doing business in the Philippines. In the absence of contrary evidence to controvert the foregoing documents, this Court finds no reversible error in the factual findings of the Court in Division.

Regardless however of the foregoing findings, the Court in Division denied in its entirety, KPC's claim for refund relative to its reported sales of services to Kurimoto Ltd. due to KPC's failure to prove and establish the following: 1) that the reported sales in the amount of ₱5,042,745.31 was paid for in acceptable foreign currency; and 2) that the foreign currency sales proceeds in the amounts of JPY12,020,530.00 and US$336,273.43, with a combined peso

[21] Exhibit "P-16," Division Docket (CTA Case No. 9417), Vol. 1, p. 448 to 501.
[22] Exhibit "P-17," Division Docket (CTA Case No. 9417), Vol. 1, p. 502.
[23] Exhibit "P-18," Division Docket (CTA Case No. 9417), Vol. 1, p. 470.
[24] Exhibit "P-33," ICPA Report, Folder 2, p. 61.

equivalent of ₱14,457,107.53, were duly accounted for in accordance with BSP rules and regulations[25].

Thus, in the assailed Decision, the Court in Division disallowed KPC's reported sales of services to Kurimoto Ltd., for failure of KPC to satisfy the *second* requisite for VAT zero-rating under Section 108(B)(2) of the NIRC, as amended, *i.e.,* that payments for its services must be in acceptable foreign currency and accounted for in accordance with the BSP rules and regulations.

In sum, We find no sufficient basis to depart from the foregoing ruling of the Court in Division.

KPC's sales of services to THPAL, a PEZA-registered entity, qualify as zero rated sales.

The CIR avers that KPC's sales of services to THPAL, a PEZA-registered enterprise, do not qualify as zero-rated sales but subject to 12% VAT. Allegedly, to qualify as zero-rated sales, the PEZA-registered enterprise who is the client or service-recipient of KPC, should have availed of the 5% preferential tax, otherwise, they are subject to 12% VAT under Section 108 of the NIRC of 1997, as amended.

We disagree.

In order to attract legitimate and productive foreign investments, through the establishment of special economic zones, Congress resolved to accord special economic zones with the status of a **separate customs territory**, as stated in Section 8 of R.A. No. 7916, as amended by R.A. No. 8748, otherwise known as the "*The Special Economic Zone Act of 1995,*" to wit:

> "**SEC. 8**. *ECOZONE to be Operated and Managed as Separate Customs Territory.* – The ECOZONE shall be managed and operated by the PEZA as separate customs territory."

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[25] Decision dated June 4, 2019, p. 14, last paragraph, EB Docket, p. 33

An ecozone, as a separate customs territory, denotes that "in such zone is created the legal fiction of **foreign territory**."[26] Thus, while "an ecozone is "indubitably a geographical territory of the Philippines, it is however, regarded in law as **foreign soil**. This legal fiction is necessary to give meaningful effect to the policies of the special law creating the zone."[27]

The designation of an ecozone as foreign territory is significant as the Philippines adheres to the ***Cross Border Doctrine,*** which states that "*no VAT* shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority."[28]

In other words, importations made into Philippines' customs territory are subject to Philippine customs and tax laws, such as VAT, which is a tax on consumption levied on the importation of goods into the Philippines.[29] On the other hand, importations into ecozones are considered importations made into foreign territory, and are *not* subject to VAT.

Accordingly, sales of goods and services made by a VAT-registered taxpayer in the Philippines customs territory, to a PEZA-registered enterprise located in an ecozone that is considered as foreign territory, are considered *exports* to a foreign country and are subject to zero percent (0%) VAT.

In the case of *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.,*[30] the Supreme Court held that PEZA-registered enterprises are not subject to VAT, by virtue of the fiction that ecozones are considered foreign territory, to wit:

> "This Court agrees, however, that **PEZA-registered enterprises, which would necessarily be located within ECOZONES, are VAT-exempt entities, *not* because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-**

[26] *Commissioner of Internal Revenue vs. Seagate Technology (Philippines),* G.R. No. 153866, February 11, 2005.
[27] *Id.*
[28] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* G.R. No. 190506, June 13, 2016.
[29] Sections 4.105-2 and 4.107-1, Revenue Regulations No. 16-2005.
[30] G.R. No. 150154, August 9, 2005.

registered enterprises, in lieu of all taxes; but, rather, <u>because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.</u>

xxx xxx An ECOZONE or a Special Economic Zone has been described as —

> ...[S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a <u>separate customs territory</u>; thus, <u>creating the fiction that the ECOZONE is a foreign territory</u>. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory. Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.

Given the preceding discussion, what would be the VAT implication of sales made by a supplier from the Customs Territory to an ECOZONE enterprise?

The Philippine VAT system adheres to the ***Cross Border Doctrine***, according to which, <u>no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority</u>. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed with ten percent (10%) VAT." *(Emphasis supplied.)*

In this case, this Court concurs with the findings of the court *a quo* that THPAL is a PEZA-registered entity for the subject period of the claim, as evidenced by PEZA Certificate Nos. 2014-0620[31] and 2014-0529.[32] Accordingly, We find no reversible error in the findings of the Court in Division that KPC's "*reported sales to THPAL for the first and second quarters of CY 2014 amounting to ₱130,846,697.03, which is duly covered by VAT zero-rated official receipts, in accordance with Section 113(A)(2) of the NIRC of 1997, as amended, qualify for VAT zero-rating under Section 108(B)(3) of the same Code.*"[33]

As a PEZA-registered entity, THPAL is qualified for VAT zero-rating of its transactions with local suppliers because of Section 8 of R.A. No. 7916, establishing the fiction that ecozones are foreign territory. Thus, KPC's reported sales to THPAL into the ecozone are considered exports made to a foreign territory, qualifying for VAT zero-rating.

Anent the CIR's argument that in order to qualify for VAT zero-rating, the PEZA-registered enterprise should have first availed of the 5% preferential tax rate, We do not agree.

In the case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,*[34] the Supreme Court ruled that the previous rule requiring that the PEZA-registered enterprise chose the 5% preferential tax rate on its gross income in lieu of all taxes is now disregarded after the issuance of Revenue Memorandum Circular (RMC) No. 74-99, which recognized the *Cross Border Doctrine* and the *Destination Principle*, to wit:

> "**<u>Prior to the effectivity of RMC 74-99, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives, namely</u>**: (1) if the PEZA-registered enterprise chose the 5% preferential tax on its gross income in lieu of all taxes, as provided by Republic Act No. 7916, as amended, then it was VAT-exempt; and (2) if the PEZA-registered enterprise availed

[31] Exhibit "P-10," Division Docket (CTA Case No. 9417), Vol. 1, p. 430.
[32] Exhibit "P-32," ICPA Report, Folder 2, pp. 59 to 60.
[33] Docket, p. 36.
[34] G.R. No. 190506, June 13, 2016.

itself of the income tax holiday under Executive Order No. 226, as amended, it was subject to VAT at 10% (now, 12%). xxx xxx xxx

xxx xxx **With the issuance of RMC 74-99, the distinction under the old rule was disregarded** and the new circular took into consideration the two important principles of the Philippine VAT system: the Cross Border Doctrine and the Destination Principle. Thus, *Toshiba* opined:

> **The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise.** This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, and even this Court, cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges.
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> According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%) preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.
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> ***This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory.*** It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). ***Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity.*** *(Emphasis supplied)*

Based on the foregoing ratiocinations, the question of whether or not a PEZA-registered enterprise is VAT-exempt is no longer dependent on the type of fiscal incentives it opts to avail of. In other words, the old requirement that a PEZA-registered enterprise must first avail of the 5% preferential tax rate on its gross income in lieu of all taxes, is now dispensed with.

With the issuance of RMC No. 74-99, which took into consideration the *Cross Border Doctrine* and the *Destination Principle*, it is clear that *all* sales of goods, properties and services by a VAT-registered taxpayer, to a PEZA-registered enterprise in an ecozone, shall be subject to *zero percent (0%) VAT*, without any qualification. In this case, KPC's reported sales to THPAL, a PEZA-registered enterprise within an ecozone, are correctly subjected to zero-rated VAT, without regard to the type of fiscal incentives THPAL would opt to avail of.

Factual findings of the Court in Division, thoroughly supported by law and evidence on record, must prevail over petitioner's general and perfunctory statements.

Finally, the CIR likewise argues that the Exhibits of KPC should not be given any probative value for being hearsay evidence.

We are not swayed.

The foregoing contention is a mere reiteration of the argument interposed by the CIR before the Court in Division, which was already passed upon and exhaustively discussed in the assailed Decision and Resolution.

In his Petition for Review, the CIR failed to point out any specific or supposed error in the findings of fact, or the admission and appreciation of KPC's evidence, by the Court in Division.

As between the factual findings of the Court in Division, which is thoroughly supported by law and evidence on record; and the general and perfunctory statements made by the CIR against the said rulings, the former must perforce prevail. Without any showing that the factual findings of the Court in Division are irregular or erroneous, this Court finds no reason to deviate therefrom.

Finally, the CIR argues that tax refunds are in the nature of exemptions and as such, are regarded in derogation of sovereign authority. Thus, they should be construed in *strictissimi juris* against the person or entity claiming the exemption.

We are not persuaded.

The CIR is correct is asserting that tax exemptions are strictly construed against the taxpayer. However, it is equally true that the government is cautioned against the misuse of technicalities in order to keep money it is not entitled to. In the case of *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue,* [35] the Supreme Court said:

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[35] *Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue,* G.R. Nos. 206079-80 and 206309, January 17, 2018.

> "Lastly, while tax exemptions are strictly construed against the taxpayer, the government should not misuse technicalities to keep money it is not entitled to.
>
>> Substantial justice, equity and fair play are on the side of petitioner (respondent in this case). Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it, thereby enriching itself at the expense of its law-abiding citizens. **Under the principle of *solutio indebiti* provided in Art. 2154, Civil Code, the BIR received something "when there [was] no right to demand it," and thus, it has the obligation to return it**. Heavily militating against respondent Commissioner is the ancient principle that no one, not even the state, shall enrich oneself at the expense of another. Indeed, **simple justice requires the speedy refund of the wrongly held taxes**." *(Emphasis supplied.)*

Applying the foregoing principle of *solutio indebiti* in claims for tax refunds, the rule is settled in that once the taxpayer has presented sufficient proof of its entitlement thereto, it should not be denied its right to a speedy refund of erroneously held taxes. Considering that KPC has sufficiently proven its entitlement to the refund sought, there is no valid reason to deny its claim for refund.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. The Decision dated June 4, 2019 and the Resolution dated October 25, 2019 rendered by the Special Second Division of this Court in CTA Case No. 9417 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES FAJARDO
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