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

## ***SECOND DIVISION***

**COLT COMMERCIAL, INC.,**
*Petitioner,*

- versus -

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

**CTA CASE NO. 9270**

Members:

**CASTAÑEDA, JR.,** *Chairperson,*
**CASANOVA,** *and*
**MANAHAN,** *JJ.*

Promulgated:
AUG 3 1 2018
3:20 p.m.

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# AMENDED DECISION

**MANAHAN, *J.*:**

For resolution are the following:

1. respondent's **Motion for Reconsideration (To the Decision dated March 21, 2018)**[1], filed through registered mail on April 19, 2018 and received by the Court on April 26, 2018, with petitioner's **Comment (on Respondent's Motion for Partial Reconsideration dated 17 April 2018)**[2], filed through registered mail on May 21, 2018, which the Court received on May 25, 2018; and

2. petitioner's **Motion for Reconsideration (of the Decision dated April 3, 2018)**[3], filed through registered mail on April 19, 2018 and received by the Court on April 26, 2018, without respondent's comment

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[1] Docket, CTA Case No. 9270, Vol. III, pp. 1126-1131.
[2] *Id.*, Vol. III, pp. 1174-1181.
[3] *Id.*, Vol. III, pp. 1133-1139.

despite notice as per Records Verification dated June 6, 2018.

Both parties seek reconsideration of the Court's Decision dated April 3, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, this Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of ₱583,863.63 in favor of petitioner, representing the latter's unutilized input VAT attributable to its zero-rated sales covering the third quarter of taxable year 2013.
>
> **SO ORDERED**."

***Respondent's Motion for Reconsideration***

In assailing the aforesaid Decision, respondent anchors his arguments on the ground that this Court erred in declaring that petitioner is entitled to a refund of ₱583,863.63 representing the latter's unutilized input value-added tax (VAT) attributable to zero-rated sales covering the third quarter of taxable year (TY) 2013.

Respondent contends that since the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the second quarter of TY 2015, petitioner has already chosen to carry-over the claimed input VAT. Respondent alleges that considering that petitioner has exercised the option to carry-over pursuant to Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, the latter is barred later from applying for a refund because its option to carry-over is irrevocable.

Respondent also alleges that as regards petitioner's considered export sales, the latter presented only a Certification dated February 16, 2016 which was issued by the Philippine Economic Zone Authority (PEZA) stating therein the names of corporations which were allegedly issued VAT zero-rating certifications, which is not compliant with the documentary requirement under the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 16-2005. Thus, respondent insists that the presentation of the PEZA Certification issued to the corporations to which the petitioner had alleged sales during TY 2013 was not complied with.

According to respondent, the said certification is not sufficient to hold that sales made to those listed entities during the third quarter of TY 2013 were entitled to VAT zero-rating, and individual PEZA Certifications should have been presented by petitioner. Respondent further states that the instant petition is premature considering that petitioner's claim for tax refund/credit of unutilized input tax payments attributable to zero-rated sales for the third quarter of TY 2013 is still pending investigation with Revenue Region No. 6, Manila.

In its comment, petitioner counter-argues that Section 76 of the NIRC of 1997, as amended, provides taxpayers with options by which they may recover excess income tax paid to the government. Petitioner explains that the aforesaid law applies to recovery of excess income tax and not to excess input VAT which is the subject of this case; thus, respondent's arguments have no factual and legal basis.

Petitioner likewise avers that Section 106(A)(2)(a)(5) in relation to Section 113(A)(1), (2)(c) and (3) of the NIRC of 1997, as amended, and Section 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005 do not require that individual PEZA Certifications of purchasers must be presented for purposes of refund of excess input VAT. Petitioner argues that the PEZA Certification dated February 16, 2016 falls within the classification of "any proof of the buyer's entitlement to tax incentives". As to respondent's argument that the instant petition is premature since petitioner's claim for tax refund/credit of unutilized input tax payments is still pending investigation with Revenue Region No. 6, Manila, petitioner asserts that respondent did not present any evidence to support the same and that the Court has already ruled that this case was timely filed.

The Court finds respondent's arguments bereft of merit.

Section 110(B) and (C) of the NIRC of 1997, as amended, provides:

> "SEC. 110. *Tax Credits.* –
>
> xxx xxx xxx
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> (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the

> excess shall be paid by the VAT-registered person. **If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: *Provided, however,* That any input tax attributable to zero-rated sales by a VAT-registered person may at his option be refunded or credited against other internal revenue taxes**, subject to the provisions of Section 112.
>
> (C) *Determination of Creditable Input Tax.* – The **sum of the excess input tax carried over from the preceding month or quarter and the input tax creditable to a VAT-registered person during the taxable month or quarter shall be reduced by the amount of claim for refund or tax credit for value-added tax and other adjustments**, such as purchase returns or allowances and input tax attributable to exempt sale." (*Emphasis supplied.*)

On the other hand, Section 76 of the NIRC of 1997, as amended provides:

> "SEC. 76. *Fiscal Adjustment Return.* – xxx.
>
> xxx xxx xxx
>
> In case the corporation is **entitled to a tax credit or refund of the excess estimated quarterly income taxes paid**, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor." (*Emphasis supplied.*)

Based on the above-quoted provisions, it is clear from the foregoing that Section 110(B) and (C) of the NIRC of 1997, as amended, applies to recovery of excess input VAT attributable to zero-rated sales, while Section 76 of the same law applies to recovery of excess income tax.

Since the subject of the present claim for refund is the unutilized input VAT attributable to petitioner's zero-rated sales, the provisions of Section 110(B) and (C) of the NIRC of 1997, as amended, are applicable. As provided therein, in case the taxpayer chooses to refund the excess input VAT carried over from the preceding month or quarter, it merely requires that the amount of such excess input VAT being claimed for refund should be deducted from the accumulated input VAT as of the month or quarter when such claim was opted to be filed. The reason for the deduction is to assure that the claimed input VAT shall not be further applied against any future output VAT liability.

To reiterate, it was established that while the input VAT claim was carried-over to the succeeding quarters, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in petitioner's Quarterly VAT Return for the second quarter of TY 2015, thus preventing the application/utilization thereof in the succeeding quarters.[4]

With respect to the PEZA Certification dated February 16, 2016, the Court finds it sufficient to prove petitioner's zero-rated sales to PEZA-registered entities.

As discussed in the assailed Decision, aside from sales invoice as proof of sale of goods, Section 106(A)(2)(a)(5) in relation to Section 113(A)(1), (B)(1), (2)(c) and (3) of the NIRC of 1997, as amended, and Section 4.113-1(A)(1), (B)(1) and (2)(c) of RR No. 16-2005 require any proof of the buyer's entitlement to tax incentives under Executive Order No. 226 or special laws. The said PEZA Certification has sufficiently evidenced the entitlement of petitioner's buyer to tax incentives.

As regards the timeliness of the filing of the instant petition, the same has already been passed upon extensively in the assailed Decision and this Court finds no use or merit to reiterate the same arguments herein.

***Petitioner's Motion for Reconsideration***

Petitioner assails the above-mentioned Decision on the ground that it was able to substantiate its actual export sales and VAT payment on purchases.

A. <u>Disallowed direct export sales</u>

Petitioner avers that it was able to prove actual export sales through the certified true copies of its sales invoices marked as Exhibit "P-9". The corresponding bank credit

[4] Docket, Vol. III Page 18 of the Court's Decision, p. 1115. an

memoranda/ certification, part of Exhibit "P-20", of the inward remittance of the said sales allegedly proves actual export of its products abroad.

To prove that its clients situated abroad paid the amount of their purchases from petitioner, it has attached to the instant motion a schedule of its application of payments[5] that contained a detailed analysis of schedule of inward remittance in the year 2013. Petitioner has also attached to its motion, the Sworn Statement[6] dated April 19, 2018 of the Court-commissioned Independent Certified Public Accountant (ICPA), Mr. Garry Pagaspas, confirming the detailed analysis of petitioner's inward receipts of dollar remittances and application of payments.

B. Disallowed input tax on importations

As to the disallowance of input tax on importations, petitioner contends that it was able to substantiate its payment of VAT on importation through the import entry marked as Exhibit "P-22" in this case. Petitioner asserts that Section 4.110-8 of RR No. 16-2005 requires the submission of import entry or other equivalent document showing actual payment of VAT on the imported goods to substantiate input tax credits. The use of the word "or" in RR No. 16-2005 allegedly denotes alternatives; thus, petitioner submits that its input VAT on importation was substantiated by the import entry which was formally offered and admitted by this Court.

Petitioner likewise argues that pursuant to Section 107 of the NIRC of 1997, as amended, the 12% VAT on importation of goods based on the total value used by the Bureau of Customs (BOC) in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges, shall be paid by the importer prior to the release of such goods from customs custody. As such, BOC could not have allegedly released the imported goods and petitioner could not have used the same had the 12% VAT on importation not been paid.[7]

Petitioner also disagrees with the findings of the Court that the purchase invoice of Taegutec Ltd dated June 28, 2013 under Purchase Invoice No. EY9B13000005 was outside the

[5] Docket, Vol. III, Annex "P-1-MR", p. 1140.
[6] *Id.*, Annex "P-2-MR", pp. 1141-1142.
[7] *Id.*, par. 15, Motion for Reconsideration (of the Decision dated April 3, 2018), p. 1136.

period of the claim; and instead, petitioner claims that the said date in the purchase invoice refers to the date when the goods were placed in the BOC but the payment thereto was made on July 1, 2013. To prove the said allegation, petitioner has attached to the motion the BOC Assessment Notice with its corresponding Statement of Settlement of Duties and Taxes, and Import Entry and Internal Revenue Declaration (IEIRD).[8]

To further prove the payment of VAT on its importation, petitioner has submitted together with the motion, a series of Statements of Settlement of Duties and Taxes with reference to the disallowed importations without proof of payment.[9]

As regards the Court's finding that proof of VAT remittance was not validated by bank with respect to Purchase Invoice No. 82489 dated July 18, 2013, petitioner has attached to its motion, the Sworn Statement[10] of Mr. Frederick V. Cruz, bank officer from Bank of Commerce,[11] affirming that the bank generated and released a debit memo in the amount of ₱40,036.00 on July 19, 2013 representing payment of customs duties and taxes by petitioner. Thus, petitioner has also attached the PAS5 Head Office Payment History to reflect such matters mentioned in the Sworn Statement of Mr. Cruz.[12]

Moreover, petitioner denies the Court's ruling that Purchase Invoice No. 1839932522 indicating the importation on September 20, 2013, pertained to Colt Commercial and not to petitioner.[13] In order to substantiate its claim, petitioner has attached the BOC Statement and Receipts of Duties Collected on Informal Entry No. 00046807432.[14] Petitioner avers that the said document was part of documentary exhibits formally offered and admitted by the Court.

The Court finds petitioner's argument partially meritorious.

Under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, direct export sales qualify for VAT zero-rating if the following conditions are present: (1) there was a sale and actual shipment of goods from the Philippines to a foreign country; (2)

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[8] Docket, Vol. III Annexes "P-3a-MR" to "P-3g-MR", pp. 1144-1150.
[9] *Id.*, Annexes "P-4a-MR" to "P-4e-MR", pp. 1151-1155.
[10] *Id.*, erroneously entitled as "Affidavit of Loss", p. 1156.
[11] *Id.*, Annex "P-5-MR", p. 1156.
[12] *Id.*, Annex "P-6-MR", p. 1157.
[13] *Id.*, par. 18, Motion for Reconsideration (of the Decision dated April 3, 2018), p. 1137.
[14] *Id.*, Annex "P-7-MR", p. 1158.

the sale was made by a VAT-registered person; and (3) the sale was paid for in acceptable foreign currency.

Thus, any VAT registered person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, to wit: (1) the sales invoice as proof of sale of goods; (2) the export declaration and bill of lading or airway bill as proof of actual shipment of goods from the Philippines to a foreign country; and (3) the bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services.

However, the documents attached to petitioner's motion for reconsideration and marked as Annexes "P-1-MR", "P-2-MR", "P-3a-MR" to "P-3g-MR", "P-4a-MR" to "P-4e-MR", "P-5-MR", and "P-6-MR" have not been formally offered as evidence and have just been presented to this Court for the first time.

The Court takes into consideration the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*[15], that for evidence to be considered, the same must be formally offered, to wit:

> "Under Section 8 of Republic Act (*R.A.*) No. 1125, the CTA is categorically described as a court of record. As such, it shall have the power to promulgate rules and regulations for the conduct of its business, and as may be needed, for the uniformity of decisions within its jurisdiction. Moreover, as cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Thus, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. Pertinent is Section 34, Rule 132 of the Revised Rules on Evidence which reads:
>
>> SEC. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
>
> Although in a long line of cases, we have relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the trial court, we exercised extreme caution in applying the exceptions to the rule, as pronounced in *Vda. de Oñate v. Court of Appeals*, thus:

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[15] G.R. No. 197515, July 2, 2014.

> From the foregoing provision, ***it is clear that for evidence to be considered, the same must be formally offered***. xxx"

Since the annexes attached to the motion have not been formally offered and petitioner has not stated any ground for the relaxation of the application of Section 34, Rule 132 of the Rules of Court in this case, the Court cannot consider the said documents.

With regards to the sales invoices[16], schedule and bank certification of inward remittance[17], and reconciliation of export sales and dollar remittances[18] presented as evidence by petitioner and admitted by the Court, the same merely established the fact of sale of goods and the receipt of the corresponding foreign currency remittances. However, <u>the said pieces of evidence do not reveal the actual shipment of goods from the Philippines to a foreign country</u>. Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, mandates that the goods be physically shipped out of the Philippines to a foreign country which can be proven through the presentation of corresponding export declarations, and bills of lading or airway bills[19]. Thus, petitioner's non-presentation of the said export documents warrants the denial of VAT zero-rating of its claimed direct export sales.

As regards the VAT on importation, the Court agrees with petitioner that it may be supported by import entry showing actual payment of the VAT. However, the import entry referred to by petitioner as Exhibit "P-22" was denied admission by the Court in the Resolution dated March 17, 2017, for not being found in the records of the case.[20]

As earlier discussed, the annexes attached to the motion such as the Statements of Settlement of Duties and Taxes and the Sworn Statement of Mr. Cruz, bank officer of the Bank of Commerce, were not formally offered, thus, the same cannot be considered by the Court. Accordingly, petitioner was only able to offer as evidence the Assessment Notice to prove actual payment of VAT on the importations which the Court found as

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[16] Exhibit "P-9".
[17] Exhibit "P-19".
[18] Exhibit "P-20".
[19] *Aniceto G. Saludo Jr. et al. v. Hon. Court of Tax Appeals et al.*, G.R. No. 95536, March 23, 1992.
[20] Docket, Vol. III, p. 1058.

insufficient. Hence, the disallowance of input VAT on these importations shall remain.

As to disallowed input VAT on importations referring to the transactions with YG-1 Tools Asia Pte Ltd, the same are listed as follows:

| **Exhibit Nos.**[21] | **Date** | **Registered Name** | **Input VAT** |
|---|---|---|---|
| *Importation documents do not pertain to petitioner but to Colt Commercial* | | | |
| P-38.173 | 09/05/2013 | Yg-1 Tools Asia Pte Ltd | ₱ 119,361.36 |
| P-38.192 | 09/20/2013 | Yg-1 Tools Asia Pte Ltd | 11,770.23 |
| **Total** | | | **₱131,131.59** |

After taking a second look at the supporting BOC Official receipt pertaining to the importation dated September 20, 2013 with VAT amount of ₱11,770.23, it shows that the same was under the name of petitioner. Hence, the input VAT of ₱11,770.23 represents petitioner's valid claim.

Consequently, petitioner's allowable input VAT for the third quarter of taxable year 2013 as found in the assailed Decision is increased from ₱1,700,263.79[22] to ₱1,712,034.02 and the excess input VAT attributable to the valid zero-rated sales is increased from ₱583,863.63 to ₱594,501.00, as computed below:

| | | |
|---|---|---|
| Allowable Input VAT per April 3, 2018 Decision | ₱ 1,700,263.79 | |
| Add: Additional Allowable Input VAT | 11,770.23 | |
| **Total Allowable Input VAT** | | **₱ 1,712,034.02** |
| Less: Output VAT | | 1,054,219.86 |
| **Excess Input VAT Available for Refund** | | **₱ 657,814.16** |
| Multiply by Percentage of Valid Zero-Rated Sales over Total Zero-Rated Sales: | | |
| Valid Zero-Rated Sales | ₱ 24,838,502.93 | |
| Divided by Total Reported Zero-Rated Sales | 27,483,753.38 | 90.37522213% |
| **Excess Input VAT Attributable to the Valid Zero-Rated Sales** | | **₱ 594,501.00** |

**WHEREFORE**, in view of the foregoing, respondent's **Motion for Reconsideration (To the Decision dated March 21, 2018)** is **DENIED** for lack of merit. On the other hand, petitioner's **Motion for Reconsideration (of the Decision**

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[21] Admitted as part of Exhibit "P-11" (see petitioner's Formal Offer of Evidence).
[22] Docket, Vol. III, page 18 of the Court's Decision, p 1115.

**dated April 3, 2018)** is **PARTIALLY GRANTED**. Accordingly, the dispositive portion of this Court's Decision dated April 3, 2018 is amended to read as follows:

> "**WHEREFORE**, premises considered, this Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** the amount of **₱594,501.00** in favor of petitioner, representing the latter's unutilized input VAT attributable to its zero-rated sales covering the third quarter of taxable year 2013."
>
> **SO ORDERED**."

**SO ORDERED**.

**CATHERINE T. MANAHAN**
Associate Justice

We concur:

**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.

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

## CERTIFICATION

Pursuant to Article VIII, Section 13 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