REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

YH GREEN ENERGY INCORPORATED, *Petitioner,*	**CTA CASE NO. 9784**
	Members:
- versus -	**RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	JUN 10 2024 2:20 p.m.

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RESOLUTION

***MODESTO-SAN PEDRO, J.*:**

For the Court's resolution is petitioner's *Motion for Reconsideration (of the Decision dated December 7, 2021)*, filed on March 29, 2022,[1] with respondent's *Comment/Opposition (to Petitioner's Motion for Reconsideration)* filed on January 15, 2024.[2]

Against this Court's *Decision*, dated December 7, 2021 ("Assailed Decision"), which denied petitioner's claim for refund of its unutilized input value-added tax ("VAT") for the 4th quarter of taxable year ("TY") 2015 primarily on the ground that petitioner failed to establish that it is engaged in zero-rated sales, petitioner asserts that neither the applicable law nor the implementing regulations provide that: 1) there be zero-rated or effectively zero-rated transactions at the time the claimed input VAT was incurred or paid; or 2) there must be existing zero-rated sales in the same quarter for VAT refund claim.

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[1] Docket – Vol. 3, pp. 1171 to 1176.
[2] *Id* at 1214 to 1217.

Petitioner pleads exception from the application of the ruling in *Luzon Hydro Corporation v. Commissioner of Internal Revenue*[3] ("*Luzon Hydro*") and emphasizes that as a generation company that operates a solar power plant located in Hermosa, Bataan, it is qualified under the *EPIRA Law*[4] entitling companies generating power from renewable sources to zero-rated sales. In this regard, petitioner belatedly submits with the present Motion its Department of Energy ("DOE") Certificates of Registration and Endorsement. While petitioner has no recorded sale of electricity in the year 2015 as it only started generating electricity in 2016, petitioner already had zero-rated sales when it filed the administrative claims for refund with the BIR for input taxes incurred during the TY 2015.

Lastly, petitioner insists that respondent's issuance of a partial disallowance of its administrative claim for refund will undoubtedly show that it was able to comply with the substantiation requirements, albeit incomplete, under the law and existing regulations and that input taxes were indeed incurred and paid in 2015.

On the other hand, in his Comment, respondent points out that petitioner is not entitled to refund for failure to prove that it is registered with and endorsed by the DOE and that it has zero-rated sales during the 4th quarter of TY 2015. Further, respondent asserts that petitioner cannot rely on the partial disallowance of its administrative claim as it was merely a recommendation and was ultimately reversed by respondent himself.

After due consideration, the Court finds petitioner's Motion for Reconsideration bereft of merit.

It must be stressed that claims for refund or tax credits of unutilized input taxes is governed by *Section 112 of the National Internal Revenue Code of 1997, as amended, ("the Tax Code")*, which provides in part that:

> SEC. 112. *Refunds or Tax Credits of Input Tax.* —
>
> (A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-registered person, **whose sales are zero-rated or effectively zero-rated** may, within two (2) years after the close of the taxable quarter **when the sales were made**, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid **attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: *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

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[3] G.R. No. 188260, November 13, 2013.
[4] Republic Act No. 9163.

> 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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
> (Emphases, Ours)

The foregoing provision is clear and straightforward. A taxpayer is entitled to a refund or tax credit of its unutilized input taxes attributable to zero-rated or effectively zero-rated sales by filing a claim within two years from the close of the taxable quarter *when the sales were made*. The phrase "were made" is in the past tense, meaning sales already transpired or took place. Further, "the sales" clearly pertains to zero-rated or effectively zero-rated, not any other sales. Consequently, zero-rated or effectively zero-rated sales must have already transpired or took place during the period of claim for a claim for refund or tax credit to prosper. This is the reason why in claims for input tax refund, it is critical to prove, *first and foremost*, that zero-rated sales were reported during the taxable quarter of claim upon which the input taxes may be attributed to, and not during any other taxable quarter.

Thus, even without resorting to the ruling in *Luzon Hydro*, the applicable law itself governing claims for input tax refund or tax credits is already clear on the matter. Further, petitioner cannot take exception from the ruling in *Luzon Hydro* because it has the same circumstances in said case, where the only difference is the nature of the renewable source of energy (*i.e.* hydro and solar).

The fact that petitioner's nature of operations qualifies for zero-rating pursuant to the *EPIRA Law*, in relation to the *Tax Code*, only proves that it is entitled to said tax incentives but does not necessarily prove that such sales indeed existed. In claims for input tax refund, one of the requisites to be proven by the taxpayer-claimant is that it is engaged in zero-rated or effectively zero-rated sales. Proving engagement in zero-rated or effectively zero-rated sales has two components:

1.) The nature of the sales qualify as zero-rated or effectively zero-rated sales under *Sections 106(A)(2)* and *108(B) of the Tax Code*; and

2.) Said sales are properly substantiated in accordance with *Section 113*, in relation to *Section 236, of the Tax Code*.

Unfortunately, in this case, petitioner failed to prove either. As already discussed in the Assailed Decision, petitioner failed to submit the complete necessary documentary evidence (*i.e.* DOE Certificate of Registration) to prove that its nature of sales qualifies for zero-rating, particularly under

Section 106(A)(2)(a)(5) of the Tax Code in relation to the *EPIRA Law* and *Republic Act No. 9513*[5] and its respective implementing regulations. And equally fatal is petitioner's failure to substantiate its zero-rated sales. In fact, nothing can be substantiated in the first place since there were no zero-rated sales in the period of claim.

The Court cannot consider the belated submission of petitioner's DOE Certificates of Registration and Endorsement in the present Motion for its failure to submit the same during trials. To this Court's mind, the documents are already forgotten evidence and are thus unacceptable. As held in *Office of the Ombudsman v. Coronel,*[6] forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.

Neither can the Court consider the partial disallowance of its administrative claim for refund as proof that respondent acknowledged, albeit partially, the substantiation of petitioner's input taxes in 2015. As already discussed in the Assailed Decision, said partial disallowance is merely recommendatory and respondent himself already overturned this in his decision, dated January 22, 2018.

As to petitioner's argument that absence of zero-rated sales in 2015 is of no moment as it nevertheless already made zero-rated sales at the time of filing the administrative claim for refund in 2017, We find this entirely misplaced. To this Court's mind, petitioner is attempting to stretch the interpretation of *Section 112(A)* in a manner far from what the provision clearly states. The period *covered* by the administrative claim is entirely different from the *prescriptive period within* which to file the administrative claim. The two-year period to file an administrative claim for refund is solely for prescription purposes and is not intended to be utilized as a consideration with respect to the determination of the presence of zero-rated sales in the period of claim. As such, a taxpayer's revenue-generating status at the time of filing the administrative claim for refund is of no relevance to the claim itself.

Since petitioner admitted that it did not generate any zero-rated sales during the 4th quarter of 2015, or the period of claim, there is nothing to attribute its input taxes to. Consequently, nothing can be refunded.

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[5] Otherwise known as the "Renewable Energy Act of 2008".
[6] G.R. No. 164460, June 27, 2006.

Further, *even assuming* that the Court allows refund of petitioner's input tax for the 4th quarter of 2015 on the basis of zero-rated sales that it is yet to generate in 2016, petitioner nevertheless failed to satisfactorily prove that it did generate and reported zero-rated sales in 2016 or in 2017, when it filed the administrative claim. Petitioner did not submit its VAT Returns for the TYs 2016 and 2017 and its supporting VAT official receipts to show that it already generated and reported zero-rated sales in those periods. While petitioner submitted its Audited Financial Statements and Income Tax Return for 2016, these are not the documents which accordingly support or prove the existence of zero-rated sales for input tax refund purposes.

In summary, petitioner failed to impress the Court with cogent arguments to justify the reversal, amendment, or modification of the Assailed Decision. The same shall therefore not be disturbed.

WHEREFORE, in light of the foregoing considerations, petitioner's *Motion for Reconsideration (of the Decision dated December 7, 2021)* is **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

I CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice