REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AIR LIQUIDE PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 8017**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 12 2018 9:33 AM

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RESOLUTION

MINDARO-GRULLA, *J.*:

Before the Court is respondent's **Motion for Reconsideration** of the Amended Decision dated April 6, 2018 posted on April 30, 2018, and received by the Court on May 9, 2018 with petitioner's **Comment/Opposition (Re: BIR's Motion for Reconsideration dated 30 April 2018)**, filed on May 31, 2018.

Respondent seeks reconsideration of this Court's Amended Decision dated April 6, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, respondent's **Motion for Partial Reconsideration** is **DENIED** for lack of merit, while petitioner's **Motion for Partial Reconsideration (Re: Amended Decision dated 07 December 2017)** is **PARTIALLY GRANTED**.

Accordingly, the Amended Decision dated December 07, 2017 should be modified to read as follows:

'**WHEREFORE**, premises considered, the Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **₱3,873,051.46**, in favor of Air Liquide Philippines, Inc., representing its unutilized excess input VAT for the fourth quarter of CY 2007.

SO ORDERED.'

SO ORDERED."

In the said Amended Decision, the Court recomputed petitioner's refundable excess input VAT attributable to its zero-rated sales for the fourth quarter of CY 2007 as follows:

Input VAT Attributable to the Declared Zero-Rated Sales/Receipts		₱ 9,779,614.97
Less: Net Output VAT Payable		4,456,873.82
Excess Input VAT Attributable to the Declared Zero-Rated Sales/Receipts		₱ 5,322,741.15
Multiply by Properly Substantiated Zero-Rated Sales		
Zero-Rated Sales Previously Allowed by this Court	₱148,362,999.86	
Add: Sales made to TST, Inc.	**1,779,580.37**	x 150,142,580.23
Divide by Declared Zero-Rated Sales/Receipt per VAT Return		÷ 206,341,201.16
Excess Input VAT Attributable to Properly Substantiated Zero-Rated Sales		**₱ 3,873,051.46**

In the instant motion, respondent contends that the Court erred in denying his motion for partial reconsideration and in ruling that the amount of ₱3,873,051.46 is directly attributable to petitioner's zero-rated sales.

Respondent argues that Section 112 (A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides that what is refundable are "creditable input taxes". In turn, these must be attributable to the subject zero-rated sales.

Further, respondent contends that based on Section 110 of the NIRC of 1997 as amended, for input taxes on purchase of goods to be creditable, they must be a factor in the chain of production. Respondent contends that the input tax 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, and the connection between the purchases and the finished product should allegedly be concrete and not imaginary or remote. Also, respondent contends that in the assailed Decision, direct attributability of the purchases or input tax to the finished product whose sale is zero-rated was not shown.

Moreover, respondent argues that the Court erred in concluding that TST, Inc. and Temic Semiconductor Test, Inc. are one and the same entity.

On the other hand, petitioner in its comment/opposition in the present motion of respondent, claims that the law does not require "direct connection" or a one-to-one correspondence between the domestic purchases and the zero-rated sales. Section 112 (A) of the NIRC of 1997, as amended, even allows a proportionate allocation if the "input tax due or paid cannot be directly and entirely attributed" to the individual taxable, exempt, or zero-rated sales. Further, petitioner avers that respondent is merely denying the obvious that "TST, Inc." and "Temic Semiconductor Test, Inc." are one and the same.

The instant motion is a mere rehash of respondent's previous arguments in his Motion for Partial Reconsideration of the Amended Decision dated December 7, 2017 which has already been thoroughly discussed by this Court in the Amended Decision dated April 6, 2018, we reiterate:

> "Section 112 of the NIRC of 1997, as amended, does not require the input taxes subject of the claim be directly attributable to zero-rated sales. As a matter of fact, the provision allows allocation of input taxes in case the same are not directly and entirely attributed to any of the sales, to wit:
>
> > 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: 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 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. *(Emphasis supplied)*

The 'creditable input tax due or paid attributable to such sales' referred above is not limited to those input taxes on purchases which form part of the finished product."

Moreover, this Court maintains its findings that TST, Inc. and TEMIC SEMICONDUCTOR TEST, INC. are one and the same entity based on the evidence presented by petitioner. In the present motion, respondent's contention that the Court erred in such findings is a mere allegation without any proof that will controvert the same. Respondent is amiss of its duty to prove its contentions. Thus, this Court finds no compelling reason to reverse or modify the assailed Amended Decision.

WHEREFORE, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
Associate Justice