REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

MTI ADVANCED TEST DEVELOPMENT CORPORATION, *Petitioner,*	**CTA CASE NO. 9690**
	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 24 2022 9:10 a.m.

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AMENDED DECISION

MODESTO-SAN PEDRO, J.

For the Court's resolution are the following:

(1) Petitioner's **Motion for Partial Reconsideration (of the Decision dated February 23, 2021),**[1] filed on 22 March 2021 without respondent's Comment despite order;[2] and

(2) Respondent's **Motion for Partial Reconsideration,**[3] filed through registered mail on 23 March 2021 and received by this Court on 20 May 2021, with petitioner's Comment/ Opposition (to Respondent's Motion for Partial Reconsideration dated March 22, 2021), filed on 15 November 2021.[4]

Both Motions seek partial reconsideration of the Court's Decision, dated 23 February 2021 ("Assailed Decision"), which partially granted petitioner's claim for refund for the period 1 July 2015 to 30 September 2015,

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1 Division Records Vol. 1, pp. 494-501.
2 *Id.*, pp. 509-510.
3 *Id.* 1, pp. 502-508.
4 *Id.*, pp. 513-515.

(2nd Quarter) and for the period 1 January 2016 and 31 March 2016 (4th Quarter) in the aggregate amount of ₱957,300.81.

Petitioner's Motion for Partial Reconsideration

In its Motion, petitioner explains that **"Microchip Technology Ireland"** and **"Microchip Technology Ireland Limited"** are one and the same entity, the former being subsequently re-registered as a limited company. Petitioner further explains that since the period of claim covers sales to **"Microchip Technology Ireland"** prior to its re-registration as a limited company, the supporting documents such as the billing invoices and official receipts would only show the name of **"Microchip Technology Ireland"**. However, since the application for VAT Refund took place after the customer's re-registration as a limited company, the Certificate of Incorporation only showed its name as a limited company which the SEC adopted when it issued the SEC Certificate of Non-Registration.

As such, petitioner submits that the SEC Certificate of Non-Registration of "**Microchip Technology Ireland Limited**" is sufficient compliance to qualify for VAT zero-rated the sales to **"Microchip Technology Ireland"**. Petitioner also attached the original SEC Certification of Non-Registration of "**Microchip Technology Ireland**" as an annex to its Motion for Partial Reconsideration.

Petitioner thus prays that the Assailed Decision be set aside a new one be rendered granting the refund and ordering respondent to refund or issue a tax credit certificate in its favor in the amount of ₱6,027,683.09 representing unutilized input VAT attributable to zero-rated sales for the 2nd and 4th quarters of fiscal year ending 31 March 2016.

Respondent's Motion for Partial Reconsideration

Meanwhile, in its Motion, respondent prays that the Court's Decision, dated 23 February 2021, be set aside and another one be rendered denying petitioner's claim for refund of its excess and/or unutilized input VAT for the periods 1 July 2015 to 30 September 2015 and 1 July 2016 to 31 March 2016. Respondent argues that services rendered by petitioner to its customer, "**Microchip Technology Incorporated**", is not VAT zero-rated, considering that the customer is an entity doing business in the Philippines.

In Opposition, petitioner insists that the Court correctly found that "**Microchip Technology Incorporated**" is not doing business in the Philippines.

The Ruling of the Court

After a thorough review of the records and consideration of the arguments of the parties, the Court finds merit in petitioner's Motion for Partial Reconsideration but none in respondent's Motion for Partial Reconsideration.

The sales to "Microchip Technology Ireland" qualify for VAT zero-rating

The Assailed Decision did not consider the sales to **"Microchip Technology Ireland"** as VAT zero-rated for petitioner's failure to present the SEC Certification of Non-Registration which establishes that the customer is a non-resident foreign corporation. It held:

> "However, a perusal of the records reveals that only Microchip Technology Incorporated and Microchip Technology Ireland Limited have both the SEC Certificate of Non-Registration and proof of incorporation/ registration in a foreign country. We summarize the proofs as follows:

Customer	SEC Certificate of Non-Registration	Intragroup Services Agreement/ Articles of Incorporation/Association/ Certificate of Incorporation/ Memorandum of Association of Customers Issued in Their Respective Countries
Microchip Technology Incorporated	Exhibit "ICPA-P11-1"	Exhibits "ICPA-P11-2" to "ICPA-P11-11"
Microchip Technology Ireland	none	Exhibits "ICPA-P11-14" to "ICPA-P11-29"
Microchip Technology Ireland Limited	Exhibit "ICPA-P11-11	Exhibits "ICPA-P11-13"

> Clearly, then, it being shown that Microchip Technology Ireland did not have an SEC Certificate of Non-Registration, the sales to it cannot qualify for VAT zero-rating purposes"."

As earlier discussed, petitioner insists that **"Microchip Technology Ireland"** and **"Microchip Technology Ireland Limited"** are the same entity, and, thus, the SEC Certificate of Non-Registration of the latter also pertains and refers to the former. Petitioner refers to the Certificate of Incorporation[5] that was examined by the ICPA which would show that **"Microchip Technology Ireland Limited"** was formerly registered as "ULC- Private Unlimited Company." In its Motion for Partial Reconsideration, petitioner also attached as an annex, the original Certification of Non-Registration of **"Microchip Technology Ireland"**,[6] issued by the Securities and Exchange Commission ("SEC") on 15 March 2021. Seeking the relaxation of procedural rules, petitioner cites ***BPI-Family Savings Bank v. Court of Appeals***,[7] where it was held that in the interest of substantial justice, equity, and fair play, technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens.

The Court finds petitioner's explanation tenable.

Proceedings before the Court of Tax Appeals are not governed strictly by technical rules of evidence.[8] The paramount consideration remains the ascertainment of truth.[9]

In ***Commissioner of Internal Revenue v. De La Salle University***,[10] the Supreme Court recognized that the CTA may consider evidence attached to the motion for reconsideration:

> "Second, the **CTA is not governed strictly by the technical rules of evidence.** The CTA Division's admission of the formal offer of supplemental evidence, **without prompt objection from the Commissioner, was thus justified.**
>
> Notably, **this Court had in the past admitted and considered evidence attached to the taxpayers' motion for reconsideration**.
>
> In the case of *BPI-Family Savings Bank v. Court of Appeals*, the tax refund claimant attached to its motion for reconsideration with the CTA its Final Adjustment Return. The Commissioner, as in the present case, did not oppose the taxpayer's motion for reconsideration and the admission of the Final Adjustment Return. We thus admitted and gave weight to the Final Adjustment Return although it was only submitted upon motion for reconsideration.
>
> We held that while it is true that strict procedural rules generally frown upon the submission of documents after the trial, **the law creating the CTA specifically provides that proceedings before it shall not be governed strictly by the technical rules of evidence and that the**

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5 Exhibit "ICPA-P11-13".
6 *Id.*, p. 500.
7 G.R. No. 122480, 12 April 2000.
8 Section 8, Republic Act No. 1125 (An Act Creating the Court of Tax Appeals), as amended by Republic Act No. 9282.
9 Filinvest Development Corp. v. Commissioner of Internal Revenue, G.R. No. 146941, 9 August 2007.
10 G.R. Nos. 196596, 198841, and 198941, 9 November 2016.

paramount consideration remains the ascertainment of truth. We ruled that **procedural rules should not bar courts from considering undisputed facts to arrive at a just determination of a controversy.**

We applied the same reasoning in the subsequent cases of *Filinvest Development Corporation v. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue v. PERF Realty Corporation*, where the taxpayers also submitted the supplemental supporting document only upon filing their motions for reconsideration. ..."
(Citations omitted. Emphasis, Ours.)

In the present case, a further perusal of Exhibit "ICPA-P11-13" shows that **"Microchip Technology Ireland Limited"** was, indeed, formerly registered as "ULC- Private Unlimited Company." Respondent interposed no objection to the attached SEC Certification of Non-Registration for **"Microchip Technology Ireland"**. Meanwhile, the SEC Certification of Non-Registration of **"Microchip Technology Ireland"** attached to the Motion for Reconsideration indicates that **"Microchip Technology Ireland"** is foreign corporation. All these, taken together, remove any doubt in the Court's mind that **"Microchip Technology Ireland"** and **"Microchip Technology Ireland Limited"** are the same entity and that the latter, similar to the former, is a non-resident foreign corporation.

The Court also takes into consideration that the SEC Certification of Non-Registration of **"Microchip Technology Ireland"** pertains to a document obtained from the SEC. As such, it is considered as a public document which may be admitted without further proof of their due execution and authenticity.[11]

From the foregoing, the Court shall consider the sales to **"Microchip Technology Ireland Limited"** as the same sales of **"Microchip Technology Ireland"**, which qualify for VAT zero-rating.

<u>Respondent's Motion for Partial Reconsideration is bereft of merit.</u>

In its Motion for Partial Reconsideration, respondent avers that **"Microchip Technology Incorporated"** is an entity doing business in the Philippines and thus, sales to this customer do not qualify for VAT zero-rating.

This issue has been considered and passed upon by this Court in the Assailed Decision. The Intragroup Services Agreement, Articles of Incorporation/Association, Certificate of Incorporation, and Memorandum of

[11] G.R. No. 174461. 11 September 2013.

Association of Customers Issued in Their Respective Countries[12] are *prima facie* evidence that the clients are not doing business Philippines[13] which have not been contradicted by respondent's evidence.

Re-computation of refundable amount.

The Court affirms its findings in the Assailed Decision on petitioner's compliance with the remaining requisites to be entitled to refund or tax credit of input tax attributable to zero-rated sales particularly on the timely filing of the administrative and judicial claims and that the input taxes were not applied against any output VAT liability. The Court reiterates and clarifies that petitioner's Quarterly VAT Returns for the 2nd and 4th Quarters of fiscal year ending 31 March 2016 show that petitioner had no output tax liability against which the claimed input VAT may be applied or credited.[14] The input VAT claimed for the 2nd and 4th quarters of fiscal year ending 31 March 2016 in the amount of ₱3,717,193.03 and ₱2,601,068.29 was reflected in the column "VAT Refund/TCC Claimed" in the subsequent VAT returns of petitioner immediately after the subject period of claim (i.e. 3rd Quarter of fiscal year ending 2016 and 1st Quarter of fiscal year ending 2017).[15]

With the finding of petitioner's compliance with the requisites for VAT refund, the Court shall proceed with the re-computation of the refundable amount.

For the 2nd and 4th quarters of fiscal year ending 31 March 2016, petitioner reported sales of ₱103,892,434.81 and ₱ 78,293,277.70, in the aggregate amount of ₱182,185,712.51:

	Second Quarter (1 July 2015 to 30 September 2015)[16]	**Fourth Quarter (1 January 2016 to 31 March 2016)[17]**
VATable Sales/ Receipts	₱ -	₱ -
Sale to Government	-	-
Zero-rated Sales/ Receipts	103,892,434.81	78,293,277.70
Exempt Sales/ Receipts	-	-
Total Sales/ Receipts	**₱ 103,892,434.81**	**₱ 78,293,277.70**

[12] *See* ICPA Report, p. 10, *id.*, p. 175.
[13] Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd., G.R. No. 234445, 15 July 2020.
[14] *See* Exhibits "P-1" and "P-2," *id.*, pp. 340-350 and 355-356.
[15] Exhibits "P-12" and "P-12-a", *id.*, p. 176; Exhibits "P-13" and "P-13-a", Answer 19, *id.*, p. 418; Folder 5, pp. 568-569 and 565-564.
[16] Exhibit "P-1", Division Records Vol. 1, pp. 349-350.
[17] Exhibit "P-2", *id.*, pp. 355-356.

Meanwhile, the substantiated input VAT was determined in the Assailed Decision to be as follows:

Input VAT Claim	₱ 6,318,261.32
Less: Disallowances	504,325.06
Add: Reclassification of Input VAT Incorrectly Classified as Deferred Input VAT from CIP- Capital Goods Instead of Purchase of Services[18]	213,746.83
Substantiated Input VAT Claim	₱6,027,683.09

However, the substantiated input VAT claim was prorated based on the valid zero-rated sales as follows:

Valid Zero-Rated Sales per the Court's Verification	₱28,934,256.89
Divided by: Total Receipts per Return	182,185,712.51
Multiplied by: Substantiated Input VAT	6,027,683.09
Input VAT attributable to Zero-Rated Sales	**₱ 957,300.81**

Accordingly, the Assailed Decision only ordered the refund of **₱957,300.81**. With our finding that **"Microchip Technology Ireland Limited"** is also qualified for VAT zero-rating, the total substantiated input VAT claim of **₱6,027,683.09** should now be granted to petitioner.

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Partial Reconsideration is **GRANTED**. Meanwhile, respondent's Motion for Partial Reconsideration is **DENIED** for lack of merit. Accordingly, the assailed Decision dated 23 February 2021 is hereby amended to read:

> "**WHEREFORE**, premises considered, the instant Petition for Review filed by MTI Advanced Test Development Corporation, is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **Six Million Twenty-Seven Thousand Six Hundred Eighty-Three Pesos 09/100 (₱6,027,683.09)** representing its unutilized input VAT for the periods 1 July 2015 to 30 September 2015 and 1 January 2016 to 31 March 2016.
>
> **SO ORDERED.**"

[18] *See* Annex F- ICPA Report, *id.*, p. 272.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ERLINDA P. UY
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