REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

RIO TUBA NICKEL MINING CORP.,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2180
(CTA Case No. 9127)

x - x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

RIO TUBA NICKEL MINING CORP.,
Respondent.

CTA EB NO. 2182
(CTA Case No. 9127)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 1 0 2021 3:10 p.m.

x- x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court are the following:

1) Petition for Review[1] filed by Rio Tuba Nickel Mining Corp. ("Rio Tuba Corp."), docketed as CTA EB No. 2180, praying for the following:

   a. Granting the instant Petition for Review;

   b. Declaring Rio Tuba Corp. entitled to refund in an amount representing its duly substantiated excess/unutilized value-added tax ("VAT") input taxes corresponding to the amount disallowed for prescribed zero-rated sales in the first quarter of calendar year ("CY") 2013, the amount of local sales disallowed under the Coral Bay Doctrine and the amounts supported by substantial evidence it submitted;

   c. Ordering the Commissioner of Internal Revenue ("CIR") to refund said amounts to Rio Tuba Corp.; and

   d. Granting Rio Tuba Corp. such other reliefs as may be just and equitable under the premises.

2) Petition for Review[2] filed by the CIR, docketed as CTA EB No. 2182, praying that the Amended Decision[3] dated August 08, 2019 ("Assailed Amended Decision") and Resolution[4] dated October 29, 2019 ("Assailed Resolution") promulgated by the Court of Tax Appeals Second Division ("Second Division") be reversed and set aside, and another one be rendered denying the entire claim for refund.

The Parties

Rio Tuba Corp. is a corporation duly organized and existing under and by virtue of Philippine Laws, with principal office address at 29/F NAC Tower, 32nd Street, Bonifacio Global City, Taguig City. It is a VAT-registered entity with Certificate of Registration No. OCN 8RC0000042879 duly issued by the Bureau of Internal Revenue ("BIR") on January 01, 1997. It is also registered with the Board of Investments ("BOI") as an expanding export producer of lateritic nickel ores with BOI Certificate of Registration No. EP2004-091.[5]

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[1] Rollo (CTA EB No. 2180), pp. 5-24.
[2] Rollo (CTA EB No. 2182), pp. 1-13.
[3] Penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Jean Marie A. Bacorro-Villena concurring and with Associate Justice Catherine T. Manahan concurring and dissenting. Docket, pp. 1296-1319.
[4] *Id.*, pp. 1348-1358.
[5] *Id.*, Decision dated January 30, 2018, p. 440-479.

Rio Tuba Corp. duly registered with the Securities and Exchange Commission ("SEC") with Certificate of Registration No. 38850.[6]

On the other hand, the CIR is the duly appointed Commissioner of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code ("NIRC") of 1997, as amended, or other laws or portions thereof administered by the BIR. He holds office at 5th Floor, BIR Building, Diliman, Quezon City.[7]

The Facts

The facts as found by the Second Division are as follows:

> "On April 1, 2015, [Rio Tuba Corp.] filed its administrative claim for refund of excess VAT input taxes paid on its domestic purchases and importation of taxable goods and services and importation of goods including capital goods, together with supporting documents with [the BIR's] Excise Taxpayers' Assistance Division under the Large Taxpayers Division.
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> On July 29, 2015, [the CIR] issued a Decision on [Rio Tuba Corp.'s] claim for refund, granting only the amount of [Php]1,617,120.37 out of its [Php]26,331,332.84 claim for refund/tax credit. Thus, [Rio Tuba Corp.] filed its Petition for Review on August 26, 2015."[8]

The Ruling of the Second Division

On January 30, 2018, the Second Division promulgated a Decision[9] partially granting the Petition for Review, to wit:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, [Rio Tuba Corp.] is entitled to a tax refund in the amount of **[Php]2,077,757.45** representing its unutilized input taxes attributable to zero-rated sales for the second to fourth quarters of CY 2013.

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[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr. and Catherine T. Manahan concurring. Docket, pp. 440-479.

SO ORDERED."

The court *a quo* ruled that only the input VAT claim for the second, third and fourth quarters of CY 2013 were seasonably filed; while the input VAT claim for the first quarter of 2013 has already prescribed. Hence, out of the Php3,647,526,813.97 zero-rated sales declared per Rio Tuba Corp.'s Quarterly VAT Returns for the four quarters of CY 2013, only the amount of Php2,186,635,134.59 qualifies for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, after deducting the disallowed export sales and the prescribed first quarter sales. Additionally, following the pronouncement in *Coral Bay Nickel Corp. v. Commissioner of Internal Revenue*[10] ("*Coral Bay v. CIR*"), only Rio Tuba Corp.'s input VAT from importations were given credit by the court. The input VAT on domestic purchases of goods and services were disallowed outright. Consequently, out of the Php12,155,895.54 valid input VAT, only the amount of Php2,077,757.45 is attributable to the valid zero-rated sales of Php2,186,635,134.59.

On February 15, 2018, Rio Tuba Corp. filed a "Motion for Partial Reconsideration and/or New Trial" while the CIR filed a "Motion for Partial Reconsideration (Re: Decision promulgated 30 January 2018)" also on the same day. On July 04, 2018, a Resolution was issued by the Second Division granting Rio Tuba Corp.'s Motion for New Trial, and holding in abeyance the resolution of the parties' respective motions for partial reconsideration.

On August 08, 2019, the court *a quo* promulgated the Assailed Amended Decision, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, [the CIR] is **ORDERED TO REFUND** to [Rio Tuba Corp.] the amount of **[Php]3,500,966.09** representing its unutilized excess input VAT for the second to fourth quarters of calendar year 2013 attributable to its zero-rated sales for the same period.
>
> **SO ORDERED.**"[11]

The CIR's "Motion for Partial Reconsideration (Re: Decision promulgated 30 January 2018)" was denied while the Motion for Partial Reconsideration field by Rio Tuba Corp. was partially granted. The Second Division found no merit in Rio Tuba Corp.'s contentions that (a) the NIRC of 1997, as amended, only provides prescription of input VAT claims but does not contain any provision on prescription of zero-rated sales, and (b) *Coral Bay v. CIR* is not applicable to the instant case. Meanwhile, an examination of the new pieces of evidence as well as reconsideration of the previous ones resulted

[10] CTA EB Case No. 403 (CTA Case No. 7022), May 29, 2009.
[11] *Id.*, pp. 1314-1315.

to an increase in the amount of input VAT allowed for refund from Php2,077,757.45 to Php3,500,966.09.

Aggrieved, both Rio Tuba Corp. and the CIR filed their respective motions for partial reconsideration on August 27, 2019 and August 22, 2019, which the Second Division denied in the Assailed Resolution on October 29, 2019, which provides:

> "**WHEREFORE**, premises considered, [the CIR's] **Motion for Partial Reconsideration (Re: Amended Decision promulgated 8 August 2019)** and [Rio Tuba Corp.'s] **Motion for Partial Reconsideration (of the August 8, 2019 Amended Decision)** are **DENIED** for lack of merit.
>
> **SO ORDERED.**"[12]

The Proceedings in the Court of Tax Appeals En Banc

On November 26, 2019, Rio Tuba Corp. filed a "Motion for Extension of Time (to file Petition For Review)" [13], docketed as CTA EB No. 1950, praying for an additional fifteen (15) days or until December 11, 2019 within which to file the petition for review. The Court granted the same in a Minute Resolution[14] dated November 28, 2019. On December 11, 2019, Rio Tuba Corp. filed its "Petition for Review" [15].

On the other hand, the CIR filed his "Petition For Review"[16], docketed as CTA EB No. 2182, on November 26, 2019.

On December 12, 2019, a Minute Resolution[17] was issued consolidating CTA EB No. 2180 with CTA EB No. 2182. Thereafter, on February 03, 2020, the Court issued a Resolution[18] ordering the parties to file their respective comments on the Petitions for Review within ten (10) days from notice.

On February 13, 2020, the CIR filed its "Comment (Re: Petition for Review)"[19]. Meanwhile, Rio Tuba Corp. filed a "Motion for Time to File Comment To Petition for Review"[20] on February 21, 2020 *via* registered mail

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[12] *Id.*, p. 1352.
[13] Rollo (CTA EB No. 2180), pp. 1-3. Record shows that the Rio Tuba Corp. received the Assailed Resolution on October 29, 2019; Docket, p. 1347.
[14] *Id.*, p. 4.
[15] *Id.*, pp. 5-23.
[16] Rollo (CTA EB No. 2182), pp. 1-12. Record shows that the CIR received the Assailed Resolution on October 29, 2019; Docket, p. 1347.
[17] Rollo (CTA EB No. 2180), p. 93.
[18] *Id.*, pp. 95-97.
[19] *Id.*, pp. 98-103.
[20] *Id.*, pp. 104-108.

praying for an additional fifteen (15) days or until March 07, 2020 within which to file its comment. The Court granted the same in a Minute Resolution[21] dated March 02, 2020. On March 09, 2020, Rio Tuba Corp. filed *via* registered mail its "Comment To Petition for Review"[22].

On July 01, 2020, a Resolution[23] was issued submitting the instant cases for decision.

Assignment of Errors

Rio Tuba Corp. assigned the following errors in support of its "Petition for Review" in CTA EB No. 2180:

1) Erroneous application of *Coral Bay v. CIR*; and

2) Prescription of zero-rated sales is without legal bases and is contrary to law.[24]

On the other hand, the CIR raised a single issue in CTA EB No. 2182:

> Whether or not the Second Division erred in ruling that the law does not require that the input VAT subject of the claim be directly attributable to zero-rated sales.[25]

The Arguments of Parties

Rio Tuba Corp.'s arguments:

Rio Tuba Corp. avers that the ruling in *Coral Bay v. CIR* revolves around the cross-border doctrine as specifically applied to Philippine Economic Zone Area ("PEZA") registered entities and finds no application to zero-rated BOI-registered export entities which are not similarly situated as VAT exempt PEZA entities.

Likewise, Rio Tuba Corp. asserts that even if *Coral Bay v. CIR* finds proper application in the instant case, nowhere in the said case did the Supreme Court rule that the input VAT which cannot be refunded cannot also be applied against a VAT taxpayer's output VAT. Accordingly, the court should

[21] *Id.*, p. 109.
[22] *Id.*, pp. 110-114.
[23] *Id.*, pp. 116-118.
[24] *Id.*, p. 12.
[25] Rollo (CTA EB No. 1951), pp. 13-33.

allow the refund of Rio Tuba Corp.'s excess input VAT from its local or domestic purchases, or at the very least be applied against its output VAT.

Moreover, Rio Tuba Corp. alleges that the *Coral Bay v. CIR* ruling espouses unjust enrichment by the government, as discussed in Associate Justice Catherine T. Manahan's Concurring and Dissenting Opinion in the Amended Decision dated August 08, 2019.

Lastly, Rio Tuba Corp. submits that while its claim for input VAT for the first quarter of CY 2013 may be considered as prescribed, the same principle of prescription cannot also be applied to its zero-rated sales for lack of legal basis.

The CIR's arguments:

The CIR maintains that there should be a determination on whether the input VAT paid is directly attributable to the zero-rated sales of Rio Tuba Corp. After determining which input taxes are "creditable", the law requires a second evaluation to determine which "creditable" input VAT are "attributable", that is, the connection between the purchases and the finished product is concrete and not imaginary. In the instant case, the decision of the court *a quo* did not show direct attributability of the purchases of input VAT to the service whose sale is zero-rated. In support thereof, the CIR invokes the ruling in the cases of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[26] and *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[27] (collectively referred to as the "*Atlas* cases").

Additionally, the CIR contends that Rio Tuba Corp. failed to overcome the burden of proof to establish the factual basis of its claim for tax credit or refund.

The Ruling of the Court

Timeliness of Petitions

The Court in Division issued the Assailed Resolution, denying the CIR's "Motion for Partial Reconsideration (Re: Amended Decision promulgated 8 August 2019)" and Rio Tuba Corp.'s "Motion for Partial Reconsideration (of the August 8, 2019 Amended Decision)", on October 29, 2019. Rio Tuba Corp. received said Resolution on November 11, 2019 whereas the CIR received it

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26 G.R. No. 159471, January 26, 2011.
27 G.R. Nos. 141104 & 148763, June 08, 2007.

the next day November 12, 2019. Pursuant to Rule 4, Section 2(a)(1)[28] in relation to Rule 8, Section 3(b)[29] of the Revised Rules of the Court of Tax Appeals[30] ("RRCTA"), the CIR and Rio Tuba Corp. had fifteen (15) days from date of receipt of the resolution or until November 26, 2019 and November 27, 2019, respectively, within which to file their petitions for review.

On November 26, 2019, Rio Tuba Corp. filed its "Motion for Extension of Time (to file Petition For Review)"[31], praying for an extension of fifteen (15) days to file. The court granted the same in a Minute Resolution. On December 11, 2019, the Rio Tuba Corp. timely filed its "Petition for Review".

Meanwhile, the CIR timely filed its "Petition for Review" on November 26, 2019. Hence, the Court *En Banc* validly acquired jurisdiction over the two (2) petitions.

We now proceed to the merits of the case.

At the outset, it must be emphasized that the issues raised by Rio Tuba Corp. and the CIR in their petitions are mere reiterations of the same issues which had already been duly considered, passed upon and resolved by the Second Division in the Assailed Amended Decision and Assailed Resolution. Nevertheless, We shall discuss the issues anew if only to reinforce the earlier disquisition of the Court in Division.

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[28] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

> (a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
>
> xxx xxx xxx
>
> (1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[29] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[30] A.M. No. 05-11-07-CTA, November 22, 2005.

[31] Rollo (CTA EB No. 2180), pp. 1-3. Record shows that the Rio Tuba Corp. received the Assailed Resolution on October 29, 2019; Docket, p. 1347.

<u>CTA EB No. 2180</u>

The Second Division properly applied the principle in *Coral Bay v. CIR* by analogy in the instant case

Rio Tuba Corp. asserts that the Second Division erroneously excluded its input VAT arising from local purchases of goods and services from the computation of its valid input VAT. According to Rio Tuba Corp., the doctrine laid in *Coral Bay v. CIR* is not applicable in the case at bar.

Rio Tuba Corp. is mistaken.

In the Decision dated January 30, 2018, the court *a quo* explained that sales to BOI-registered manufacturer/exporters by local suppliers are VAT zero-rated, *viz*:

> "Pursuant to Revenue Memorandum Order (RMO) No. 9-00, sales of goods, properties or services made by a VAT-registered supplier to a BOI-registered entity whose products are 100% exported shall be accorded automatic VAT zero-rating, subject to the following reportorial and documentary requirements, prescribed under Section 3 of RMO No. 9-00:
>
> > 'SECTION 3. Sales of goods, properties or services made by a VAT registered supplier to a BOI-registered exporter shall be accorded automatic zero-rating, i.e., without necessity of applying for and securing approval of the application for zero-rating as provided in Revenue Regulations No. 7-95, subject to the following conditions:
> >
> > (1) The supplier must be VAT-registered;
> >
> > (2) The BOI-registered buyer must likewise be VAT-registered;
> >
> > (3) The buyer must be a BOI-registered manufacturer/producer whose products are 100% exported. For this purpose, a Certification to this effect must be issued by the Board of Investments (BOI) and which certification shall be good for one year unless subsequently re-issued by the BOI;

> (4) The BOI-registered buyer shall furnish each of its suppliers with a copy of the aforementioned BOI Certification which shall serve as authority for the supplier to avail of the benefits of zero-rating for its sales to said BOI-registered buyers; and
>
> (5) The VAT-registered supplier shall issue for each sale to BOI-registered manufacturer/exporters a duly registered VAT invoice with the words 'zero-rated' stamped thereon in compliance with Sec. 4.108-1(5) of Revenue Regulations No. 7-95. The supplier must likewise indicate in the VAT-invoice the name and BOI-registry number of the buyer.'
>
> In the present case, record shows, and as asserted by petitioner that it was issued a Certification by the BOI attesting to the fact that petitioner is a BOI-registered entity with 100% exports for the year 2013.
>
> Under Section 3.4 of RMO 9-00, said Certification shall serve as authority for the local suppliers of petitioner to avail of the benefits of zero-rating on their sales to petitioner on the year 2013. On the basis of said Certification, no output tax should, therefore, be shifted by the local suppliers to petitioner…"

In other words, Revenue Memorandum Order (RMO) No. 9-00 is categorical in stating that all BOI-registered entities, such as Rio Tuba Corp., are entitled to zero-rated VAT on their purchases from local suppliers. Accordingly, no output VAT should have been shifted to or passed-on to Rio Tuba Corp. from its local suppliers. In the same vein, it is not correct for Rio Tuba Corp. to recognize said erroneously passed-on VAT as input taxes.

There being no input VAT to be paid by BOI-registered entities, Rio Tuba Corp. is precluded from claiming a refund or issuance of tax credit certificate of the input VAT erroneously passed-on to it by its local suppliers.

Simply stated, Rio Tuba Corp. could not have paid input taxes on its purchases of goods and services from VAT-registered suppliers because such purchases being zero-rated, *i.e.*, no output tax was paid by the suppliers, no input tax was shifted or passed on to Rio Tuba Corp. It must be stressed that VAT is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services.[32]

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[32] Section 105, NIRC of 1997, as amended.

While it is true that the Rio Tuba Corp. should not have been liable for the VAT inadvertently passed on to it by its supplier since such is a zero-rated sale on the part of the supplier, the fact of the matter is there was erroneous payment of VAT. However, Rio Tuba Corp. is not the proper party to claim such VAT refund. Applying the Supreme Court cases of *Contex Corporation v. Commissioner of Internal Revenue*[33] and *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[34], it is Rio Tuba Corp.'s local suppliers who are the proper parties to claim the tax credit and accordingly refund Rio Tuba Corp. of the VAT erroneously passed on to the latter. Correspondingly, the Court in Division's exclusion of Rio Tuba Corp.'s input VAT from local suppliers was proper.

Rio Tuba Corp. further avers that *Coral Bay v. CIR* is not analogous to the instant case. Rio Tuba Corp. argues that the VAT circumstances of BOI-registered entities and their suppliers cannot be equated with that of PEZA-registered entities and their suppliers.

Again, We disagree.

In *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, the Supreme Court has settled the treatment of the refund claim of input VAT of taxpayers who enjoy a VAT zero-rating treatment on its purchases. Thus, considering that the instant case likewise deals with the same situation, the said case is analogous and therefore may be applied here.

Moreover, it must be noted that the said ruling of the Supreme Court is anchored on Revenue Memorandum Circular (RMC) No. 42- 03, which deals specifically with, *inter alia*, the situation of Rio Tuba Corp., without regard to the legal basis (whether under the PEZA law or otherwise) for the VAT-free treatment. Thus, being similarly situated, the rule under the said revenue issuance must also be applied in the instant case.

It must be emphasized that the thrust of *Coral Bay v. CIR* is that it is not the person or entity to whom the VAT was passed on (*i.e.*, the purchaser who enjoys input VAT exemption) who can legally claim the refund thereof. Rather, it is the statutory taxpayer or the person who passed on the said tax. Such a ruling has been made by the Supreme Court, without regard to the PEZA law or any other special law for that matter, in the earlier case of *Philippine Geothermal, Inc. v. Commissioner of Internal Revenue*[35], to wit:

> "...Whether NPC had reimbursed petitioner is not the concern of the CTA. It is solely a matter between petitioner and NPC. **For indirect taxes like VAT, the proper party to**

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[33] G.R. No. 151135, July 02, 2004.
[34] G.R. No. 190506, June 13, 2016.
[35] G.R. No. 154028, July 29, 2005.

> **question or seek a refund of the tax is the statutory taxpayer, <u>the person on whom the tax is imposed by law and who paid the same even when he shifts the burden thereof to another</u>.**
>
> Petitioner has the legal personality to apply for a refund since it is the one who made the erroneous VAT payments and who will suffer financially by paying in good faith what it had believed to be its potential VAT liability. Under the principle of *solutio indebiti*, the government has to restore to petitioner the sums representing erroneous payments of taxes. It is of no moment whether NPC had already reimbursed petitioner or not because in this case, there should have been no VAT paid at all."[36]

In the foregoing case, the refund claimant, Philippine Geothermal, Inc., entered into a service contract for the supply of steam with the National Power Corporation ("NPC"), which, at that time, enjoyed exemption from both direct and indirect taxes the latter may be required to pay. Philippine Geothermal, Inc. billed NPC VAT on the service fee charged on the supply of the steam. However, NPC did not pay the said VAT. Thus, to avoid any possible VAT deficiency, Philippine Geothermal, Inc. remitted the corresponding VAT for the transaction. Philippine Geothermal, Inc. then claimed the refund of the said VAT.

The above ruling is similar to the holding in the *Coral Bay v. CIR*. It is the seller who passed on the VAT who is entitled to the refund claim, not the purchaser enjoying a VAT-free incentive. Thus, even without the PEZA law, the rule is clear and can be applied to persons similarly situated: the proper party to seek the tax refund or credit of the passed-on VAT is the suppliers/sellers, and not the purchasers who enjoy a VAT free treatment.

In fact, the tenet in *Coral Bay v. CIR* was also applied to the purchases of Renewable Energy ("RE") Developers, entities which are also similarly situated with BOI-registered entities and PEZA Entities.

In *CBK Power Company Limited v. Commissioner of Internal Revenue*[37] and *Hedcor Inc. v. Commissioner of Internal Revenue*[38], this Court denied the input VAT refund claim of RE developers on their local supply of goods, properties and services needed for the development, construction and installation of its plant facilities and to the whole process of exploring and developing renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors and/or contractors. The reason for this is similar as the discussion above. An RE developer's local purchases of goods, properties and services needed for the development, construction and

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[36] *Emphasis and underscoring supplied.*
[37] CTA EB No. 1685 (CTA Case No. 8784), February 20, 2019.
[38] CTA EB No. 1836 (CTA Case No. 8931), August 05, 2019.

installation of its plant facilities are subject to zero-rated VAT. Hence, no output VAT should have been shifted to or passed on to RE Developers on such purchases. Conversely, no input VAT shall be paid by RE Developers on these transactions. There being no input VAT to be paid by RE Developers, it necessarily follows that they are not entitled to refund or tax credit from the said purchases.

The Second Division properly disallowed Rio Tuba Corp.'s first quarter sales amounting to Php953,523,153.46 in the computation of valid zero-rated sales for CY 2013

To reiterate, the Second Division found that Rio Tuba Corp.'s input VAT claim for the first quarter of 2013 had already prescribed. Consequently, the export sales which pertain to the first quarter were excluded in order to determine the valid zero-rated sales for the year.

Rio Tuba Corp. however avers that the NIRC of 1997, as amended, only provides prescription of input VAT claims and does not contain any provision on prescription of zero-rated sales.

We are not persuaded. We find the deduction made by the court *a quo* proper.

Section 112(A)[39] of the NIRC of 1997, as amended, the provision which governs refunds or tax credits of input VAT, clearly states that in order to validly claim a refund or tax credit of excess input VAT, the claim must be made within two (2) years after the close of the taxable quarter when the sales were made. Moreover, the input VAT incurred or paid are directly attributable or otherwise allocable to the zero-rated sales made by the taxpayer.

Failing proof to the contrary, Rio Tuba Corp.'s input VAT claim for the first quarter of CY 2013 shall be considered attributable to its reported zero-

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[39] 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 further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or 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(8)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

rated sales for the same quarter. Given that the two-year prescriptive period for the filing of the administrative claim for input VAT refund under Section 112(A) of the NIRC of 1997, as amended, is reckoned from the close of the taxable quarter when the related zero-rated or effectively zero-rated sales were made, Rio Tuba Corp.'s input VAT claim for the first quarter of CY 2013 had already prescribed. As a necessary consequence, Rio Tuba Corp.'s declared zero-rated sales for the first quarter of CY 2013 related to the input VAT claim for the same quarter should also be disallowed.

All in all, We find no sufficient basis for Rio Tuba Corp.'s petition for review.

CTA EB No. 2182

The Second Division did not err in partially granting Rio Tuba Corp.'s claim for refund in the amount of Php3,500,966.09

We do not subscribe to the CIR's argument that there should be direct attributability of the purchases or input VAT to the finished product whose sale is zero-rated.

Section 112(A) of the NIRC of 1997, as amended, allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales, *viz.*:

> "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 further, <u>That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or 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</u>: Provided finally, That for a person making sales that are zero-rated under

> Section 108(8)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."[40]

Contrary to the CIR's argument, the provision above only mandates that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales, and in this case, the Court *a quo* already found that the excess and unutilized input VAT of Rio Tuba Corp. amounting to Php3,500,966.09 is attributable to its valid zero-rated sales based on the evidence presented by it.[41] The law does not require that the input tax be directly attributable to Rio Tuba Corp.'s zero-rated sales. Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law. *Ubi lex non distinguit nec nos distinguere debemos.*[42] It is a well-recognized rule that where the law does not distinguish, courts should not distinguish.

Furthermore, the CIR's reliance in the *Atlas* cases is inaccurate as the doctrinal pronouncement therein may no longer be applied since it was decided under an earlier, now amended, Revenue Regulations. Verily, this Court finds the recent CTA *En Banc* case *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*[43], as instructive on the matter:

> "We cannot rely on the rulings in the Atlas cases being invoked by the CIR. This must be so because, as clearly shown in the said cases, the latter were decided under the earlier Revenue Regulations (RR) No. 5-87 dated September 1, 1987, as amended by RR No. 3-88 dated February 15, 1988, Section 16 of which provides, in part, as follows:
>
> > 'In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid **<u>directly and entirely attributable to the zero-rated transaction</u>** during the period covered by the application for credit or refund.' (*Emphasis and underscoring supplied*)
>
> Understandably, on the basis thereof, the Supreme Court required and ruled in the Atlas cases that the input VAT being claimed for refund should be *'directly and entirely attributable'* to the zero-rated sales. However, RR Nos. 5-87 and 3-88, and the jurisprudential pronouncements interpreting and/or applying the same, could no longer be applied as the same are deemed revoked.

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[40] *Emphasis and underscoring supplied.*
[41] Docket, Amended Decision dated August 08, 2019, pp. 1296-1319.
[42] Philippine Free Press, Inc. v. Court of Appeals (12th Division), et al., G.R. No. 132864, October 24, 2005.
[43] CTA EB Nos. 1777 & 1779, August 01, 2019.

xxx xxx xxx

> On June 22, 2005, the Secretary of Finance, upon the recommendation of the CIR, issued RR No. 14-2005, also known as the '*Consolidated Value-Added Tax Regulations of 2005*,' which became effective on July 1, 2005. Parenthetically, RR No. 14-2005 was later superseded by RR No. 16-2005 on September 1, 2005, which took effect on November 1, 2005. The latter RR, in turn, has undergone several amendments thereafter.
>
> Correspondingly, all RR pertaining to VAT, including RR Nos. 5-87 and 3-88, were deemed revoked as of July 1, 2005. Thus, unless the provisions of the said RR pertaining to the requirement that the input VAT being claimed for refund should be 'directly and entirely attributable' to the zero-rated sales, has been retained in the said RR No. 14-2005 and subsequent RR pertaining to VAT, such treatment under the said RR Nos. 5-87 and 3-88 is deemed revoked.
>
> A cursory examination, however, of RR No. 14-2005 and subsequent RR pertaining to VAT would reveal that the provisions of RR Nos. 5-87 and 3-88, as to the **requirement that the input VAT being claimed for refund should be '*directly and entirely attributable*' to the zero-rated sales, has not been retained**. Thus, the aforequoted portion of Section 16 of RR No. 5-87, as amended by RR No. 3-88, is no longer binding, upon the effectivity of RR No. 14-2005, i.e., on July 1, 2005."[44]

As to the CIR's argument that Rio Tuba Corp.'s claim for refund has no basis in fact and in law, suffice it to say that We find the court *a quo*'s conclusions and computations on the matter in order.

From the foregoing, the CIR's assertions are devoid of merit.

WHEREFORE, premises considered, the Court **DENIES** the instant Petitions for Review for lack of merit. The Amended Decision dated August 08, 2019 and Resolution dated October 29, 2019 of the Second Division in CTA Case No. 9127 are **AFFIRMED**.

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[44] *Emphasis and underscoring supplied.*

SO ORDERED.

Ma. Belen M. Ringpis-Liban

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Catherine T. Manahan
(I maintain my CDO dtd. Aug. 8, 2019)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice