CTA Form No. 8 (For DCC)

19-000355-0077

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10130

LANTRO PHILS. INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. LIEZL G. BOHOL
Bureau of Internal Revenue
Revenue Region No. 7B - East NCR
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160 L.P. Leviste Street, Salcedo Village
Makati City

GREETINGS:

You are hereby notified by these presents that on **October 31, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **November 4, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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LANTRO PHILS. INC.,
Petitioner,

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COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10130

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:
OCT 31 2024 11:34 a

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RESOLUTION

MANAHAN, J.:

Submitted before the Court is petitioner's **Motion for Reconsideration (of the Decision dated 29 April 2024)** filed through registered mail on May 22, 2024, and received by the Court on May 29, 2024, without respondent's comment as per Records Verification dated July 10, 2024.

On April 29, 2024, the Court promulgated a Decision denying petitioner's claim for refund of unutilized input value-added tax (VAT) in the amount of ₱3,949,107.91 covering the period January 1, 2017 to March 31, 2017, for failing to show that the subject input taxes have not been applied against output taxes during and in the succeeding quarters, the dispositive portion of which states as follows:

> "**WHEREFORE**, premises considered, the present *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In its Motion, petitioner prays that the said Decision be reconsidered and set aside based on the following arguments, *viz.*:

I. The Honorable Court committed a reversible error in dismissing the instant Petition for Review for lack of merit.

II. Petitioner sufficiently proved its zero-rated sales to Philippine Economic Zone Authority (PEZA)-registered entities.

III. The supporting documents for petitioner's sales transactions complied with the invoicing requirements enumerated under the Tax Code, as amended.

IV. Input VAT from petitioner's domestic purchases and importations were properly substantiated.

V. The subject input taxes have not been applied against any output VAT liability during and in the succeeding quarters, and were not carried over to the succeeding quarters.

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

Petitioner failed to prove its zero-rated sales to PEZA registered-entities.

To recall, the Court disallowed the amount of ₱12,856,792.51 out of the ₱27,033,482.33 total zero-rated sales for the first (1^{st}) quarter of taxable year (TY) 2017, due to petitioner's failure to prove that some of the PEZA-registered entities are entitled to VAT zero-rating under Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended, and its implementing regulations.

Petitioner now argues that the PEZA Certificate of Registration is deemed sufficient to entitle a supplier to VAT zero-rating with respect to its sales to a PEZA-registered enterprise. Petitioner added that nowhere in the Revenue Memorandum Circular (RMC) No. 74-99[1] was it stated that a separate PEZA certification is necessary for a VAT-registered entity to be entitled to VAT zero-rating on its sales to PEZA-registered enterprises.

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[1] "SUBJECT: Tax Treatment of Sales of Goods, Property and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise; and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE", dated October 15, 1999.

The Court does not agree.

Verily, a PEZA Certificate of Registration is defined as a certificate issued by the PEZA to an ECOZONE enterprise upon its registration.[2] Concededly, such registration *ipso facto* results in the zero-rating of the enterprise's transactions with its suppliers. This is in line with the cross-border doctrine adhered to by the Philippine VAT system, which provides that no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. In *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*,[3] the Supreme Court pronounced that administrative regulations requiring prior application for effective zero-rating cannot prevail over the VAT nature of a registered enterprise's transactions. Other than the general registration of a taxpayer from which the VAT status can be determined, no provision under our VAT law imposes additional requirements for such transactions to qualify as effectively zero-rated.

However, such registration — and by implication all the benefits and incentives arising therefrom, which includes VAT-zero rate — is not without conditions. Failure to maintain the qualifications of the registration is among the grounds for its revocation. Considering that the PEZA is entrusted by law with the establishment, operation, administration, regulation, and development of ECOZONES, Rule XXV, Section 8(C) of the Implementing Rules and Regulations of Republic Act (RA) No. 7916, in relation to Section 14 (h) of RA No. 7916,[4] provides for the cancellation of the registration, permit, and/or franchise of an ECOZONE enterprise as follows:

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[2] Section 2(s), Rules and Regulations to Implement Republic Act No. 7916, otherwise known as *"The Special Economic Zone Act Of 1995"*, approved on May 17, 1995.

[3] G.R. No. 153866, February 11, 2005.

[4] "SECTION 14. Powers and Functions of the Director General. - The director general shall be the overall coordinator of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. x x x

In addition, he shall have the following specific powers and responsibilities:

x x x

(h) To recommend to the Board the grant, approval, refusal, amendment or termination of the ECOZONE franchises, licenses, permits, contracts, and agreements in accordance with the policies set by the Board;"

"**SECTION 8.** Penalties. —

x x x

(C) Cancellation/Revocation — Registration, permit and/or franchise of an ECOZONE enterprise may be cancelled for any of the following grounds:

a) Failure to maintain the qualifications of registration/permit/franchise as required.

b) Violation of any pertinent provision of the Act, Code *(sic)* and/or Decree; and

c) Violation of any of these Rules and Regulations, the corresponding implementing memoranda or circulars or any of the general and specific terms and conditions of the Registration Agreement between the PEZA and the ECOZONE enterprise or violation of the terms and conditions of the permit/franchise issued by PEZA.

However, delay by the ECOZONE enterprise in the implementation of the timetable of its project as set by the PEZA shall result in the automatic cancellation of the certificate of registration/permit/franchise unless extended or a different period is set by the PEZA or these Rules.

The imposition of the above penalties shall be without prejudice to the assessment and collection of customs duties and taxes and/or forfeiture in accordance with the applicable provisions of the Tariff and Customs Code of the Philippines."

Evidently, while the Certificate of Registration proves that the enterprise is duly registered with the PEZA, it is the PEZA *VAT Zero-Rating Certificate (PEZA-ERD Form No. 97-01)* which confirms that the enterprise is compliant with the conditions stipulated in its PEZA Certificate of Registration and has no outstanding penalties. It is the VAT Zero-Rating Certificate which serves as competent proof that the enterprise seeking VAT refund remains a *qualified* PEZA-registered enterprise and therefore entitled to the VAT zero-rating incentive.

Herein, the Court found that petitioner failed to submit the PEZA VAT Zero-Rating Certificate of the following entities, *viz.*:

Customer	Amount
Acquire Asia Pacific Manila Inc.	₱ 562,550.00
Axiem Corporation	4,320.00
Convergys Philippines Inc.	9,967,055.70
Diversify Intelligent Staffing Solution	29,475.00
International Digital Systems	26,643.46
Sykes Asia Inc. Phils.	1,969,462.25
Tyco Fire Security and Services Pte Ltd	209,144.42
Lufthansa German Airlines	19,652.00
Vishay Philippines Inc.	40,000.00
Rakuten Inc.	28,489.68
Total	**₱12,856,792.51**

As a result thereof, the Court is unable to determine if they are qualified entities that are entitled to avail of VAT zero-rating. Hence, the disallowance of ₱12,856,792.51.

Time and again, it must be emphasized that it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[5] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption.[6] Thus, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[7] Strict adherence to the conditions prescribed by law is required of the taxpayer.[8]

Petitioner's sales transactions failed to comply with the invoicing requirements under the NIRC.

In the Decision, the Court also disallowed the amount of ₱7,576,538.22 out of the ₱27,033,482.33 total zero-rated sales for the 1st quarter of TY 2017, due to petitioner's failure to comply with

[5] *Citibank N.A. v. Court of Appeals and Commissioner of Internal Revenue,* G.R. No. 107434, October 10, 1997.

[6] *Commissioner of Internal Revenue v. Interpublic Group of Companies, Inc.,* G.R. No. 207039, August 14, 2019.

[7] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015, citing *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue,* G.R. No. 171307, August 28, 2013.

[8] *Steag State Power, Inc. (Formerly State Power Development Corporation) v. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019.

invoicing requirements, specifically, petitioner's sale of services supported only by sales invoices not by VAT official receipts (ORs), sale of services supported only by billing statement not by VAT ORs, sale of goods labelled as VAT-exempt, and sales without any supporting documents, in accordance with Section 113(A) and (B), Section 237 in relation to Section 238 of the NIRC of 1997, as amended, and Revenue Regulations (RR) No. 16-2005.[9]

Petitioner now argues that its sales transactions complied with the invoicing requirements as they were properly vouched and examined by Ms. Thea May F. Vicera, the court-commissioned Independent Certified Public Accountant (ICPA).

The Court finds petitioner's argument untenable.

At the outset, it bears stressing that the Court is not bound by the findings of the ICPA. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case, it is only persuasive in nature and not conclusive upon the Court. The determination of the merits or probative value of such report belongs to the Court, as provided in Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals, to wit:

> "SEC. 3. *Findings of independent CPA*. - The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**." *(Emphasis supplied)*

While, the ICPA is commissioned to assist the Court in the determination of the merit of a taxpayer's case, the findings and conclusions of the ICPA shall not be conclusive upon the Court which is free to either completely or partially adopt or disregard the findings of the ICPA, after making its own verification and evaluation of the evidence on record. In other words, the Court will still examine and

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[9] "SUBJECT: Consolidated Value-Added Tax Regulations of 2005", dated September 1, 2005.

verify the documents audited or examined by the ICPA – and the Court, in its sound discretion, may render judgment without considering the ICPA report. Clearly then, petitioner cannot merely rely on the ICPA's findings to validate its claim, since the ultimate determination rests upon the Court based on the evidence submitted by the parties.

Albeit, this is not to say that the Court disregarded the ICPA Report, certainly, the ICPA findings on petitioner's compliance with the invoicing requisite *vis-à-vis* the pertinent pieces of evidence presented to support that petitioner's claim were duly taken into consideration and were thoroughly examined by the Court in arriving at the conclusions made in the assailed Decision.

However, it is imperative for the taxpayer-claimant to fully substantiate its claim for refund, which in this case, petitioner failed to do so. To emphasize, in cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case.[10] For the foregoing reason, the Court upholds its disallowance in the amount of ₱7,576,538.22.

Petitioner failed to comply with the invoicing and substantiation requirements on input VAT from domestic purchases and importations.

Again, out of petitioner's total declared input VAT of ₱12,200,143.55 for the 1st quarter of TY 2017, the Court further disallowed the input VAT from domestic purchases in the amount of ₱4,132,978.11 and input VAT from importations in the amount of ₱36,561.00, due to petitioner's failure to comply with the invoicing and substantiation requirements.

Petitioner now argues that the ICPA has ascertained that summary of purchases complies with proper invoicing requirements as

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[10] *Edison (Bataan) Cogeneration Corporation v. Commissioner of Internal Revenue, etseq.*, G.R. Nos. 201665 and 201668, August 30, 2017; *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014; *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014; *Dizon v. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue v. Manila Mining Corporation*, G.R. No. 153204, August 31, 2005.

provided for in the revenue regulations. Petitioner continues that the pertinent purchase official receipts and invoices for these purchases were duly marked and submitted as exhibits, while the Certificate of Importation and importation documents issued by the Bureau of Customs were also duly marked and submitted as exhibits to support the ICPA's findings as to the input VAT from its importations.

Unfortunately, the Court is not swayed.

As already discussed, the findings and conclusions of the ICPA are not conclusive upon the Court. To stress, petitioner's failure to properly substantiate its domestic purchases and importations in compliance with Section 4.110-8 of RR No. 16-2005, and under Sections 113(A) and (B), 237, and 238 of the NIRC of 1997, as amended, as implemented by Sections 4.113-l(A) and (B) of RR No. 16-2005 inevitably leads to the disallowance of its claim. The Court reiterates its consistent ruling that actions for tax refund or credit, as in the present case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is strictissimi scrutinized and must be duly proven. The burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit.[11]

Thus, the Court maintains its disallowance of input VAT from domestic purchases and from importations in the total amount of ₱4,169,539.11 for petitioner's failure to comply with the invoicing and substantiation requirements.

Petitioner failed to prove that the subject input taxes have not been applied against any output VAT liability during and in the succeeding quarters.

In the assailed Decision, the Court found that petitioner failed to present any proof to support its claim that the amount of ₱3,949,107.91 representing input VAT, have not been applied against output taxes during and in the succeeding quarters.

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[11] *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

In refuting the said finding, petitioner claims that the ICPA has sufficiently established that the input VAT in the amount of ₱3,949,107.91 was unutilized and was not applied against any output tax as shown in its Amended 1st Quarterly VAT return for TY 2017 (Exhibit "P-6-1"). Petitioner continues that the amount of ₱5,209,804.13 being claimed for refund, as reflected under item 23D of the return, is an item of deduction from input tax. Petitioner expounds that the said amount was effectively deducted to the amount which may be carried over to the next quarter, which shows that the said amount was not applied against any output tax and was not carried over to the next succeeding quarters.

Petitioner further asserts that the reported overpayment in the amended 1st quarterly VAT return, where the amount being claimed was already deducted, was carried over to the 2nd quarterly VAT return (Exhibit P-36) in item 20A, as well as in the succeeding quarterly VAT returns (Exhibits P-37 to P-45). Petitioner points out that clearly the amount being claimed was not carried over to the succeeding quarter since the amount carried over was already net of the ₱5,209,804.13, which necessarily covers the amount being claimed. Considering that it was not carried over to the next succeeding quarters, petitioner submits that it then necessarily follows that it cannot be used to the next succeeding quarters.

The Court is not convinced.

Petitioner cannot simply state that the amount of ₱5,209,804.13 reflected under item 23D of the amended 1st quarterly VAT return for TY 2017 includes the amount of ₱3,949,107.91, which is being claimed for refund. Petitioner should establish with clear evidence that the amount claimed for refund is included in the amount declared under item 23D, especially since petitioner has other sources of input VAT which are available and may be subject to another refund. By failing to present clear evidence on the matter, the Court is unable to verify whether the amount claimed for refund is not yet applied against the output VAT liability during and in the succeeding quarters. To reiterate, it is the taxpayer-claimant that has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[12]

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[12] *Citibank N.A. v. Court of Appeal, et al.*, G.R. No. 107434, October 10, 1997.

In view of the foregoing disquisitions, the Court finds no compelling reason to amend or reverse the Decision promulgated on April 29, 2024.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (of the Decision dated 29 April 2024) is **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

We Concur:

(I reiterate my Separate Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice