**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

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| COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* | CTA EB CASE No. 1969 (CTA CASE No. 7863) |
| -versus- | *Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.* |
| PILIPINAS TOTAL GAS INC., *Respondent.* | Promulgated: DEC 13 2019 3:38 p.m. |

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**RESOLUTION**

***MINDARO-GRULLA, J.:***

Before the Court *En Banc* is the Motion for Reconsideration filed by the Commissioner of Internal Revenue (CIR)[1] on October 8, 2019, seeking to set aside this Court's Decision promulgated on September 24, 2019,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, the Decision and the Resolution, dated June 19, 2018 and November 13, 2018, respectively, are hereby **AFFIRMED**.

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[1] *En Banc* Docket, pp. 128-137.
[2] *Ibid.*, pp. 85-94.

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**SO ORDERED.**"

In his motion, the CIR merely reiterates that for input taxes on purchase of goods to be creditable, they must be a factor in the chain of production. The CIR asserts 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 assumed. Lastly, the CIR added that a tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer.

On the other hand, Pilipinas Total Gas Inc. (Total) in its comment, counters that it is entitled to its claim for refund or issuance of tax credit certificate (TCC) on the basis that its sales consists of zero-rated sales to companies who are registered with the Philippine Economic Zone Authority (PEZA) and that based on Section 106(A)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Sections 110(8) and 112(A) of the same code, and Section 3 of Revenue Memorandum Circular (RMC) No. 74-99, it is clear that the sales of goods or properties by a value-added tax (VAT)-registered supplier from the Customs Territory to a PEZA registered enterprise shall be subject to zero percent VAT. As such, its input taxes attributable to the said zero-rated sales shall be available for claim for refund or credit.

Moreover, Total asserts that since it was able to prove its claim by documentary and testimonial evidence, law, jurisprudence, and administrative issuances, the Court should not hesitate to grant the same.

After a careful consideration and evaluation of the parties' respective arguments, the Court finds that the arguments raised in the CIR's Motion for Reconsideration are mere rehash of its arguments in its Petition for Review, and have already been amply discussed, passed upon and considered.

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Contrary to the argument of the CIR, the findings of this Court is not based on assumption but on clear and convincing proof that Total's sales were made to PEZA registered entities. Thus, subject to zero percent VAT and that the input VAT of ₱7,332,423.73 is attributable to the valid zero-rated sales of ₱77,610,519.85 based on the evidence presented by petitioner.[3] Consequently, as clearly stated in Section 112(A) of the NIRC of 1997, as amended, a VAT-registered person may apply for the issuance of a TCC or refund of "creditable input tax due or paid attributable to such sales", which pertains to input taxes attributable to zero-rated or effectively zero-rated sales. To reiterate, there is nothing in the said provision which requires that the input tax subject of a claim for refund/TCC be directly attributable to zero-rated VAT sales or that the same should be limited to input taxes on the purchases of goods that formed part of the finished product.[4]

Clearly, there is no new arguments raised, as well as cogent reason to disturb the assailed Decision.

**WHEREFORE,** premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

**SO ORDERED.**

Cielito N. Mindaro-Grulla
**CIELITO N. MINDARO-GRULLA**
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

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[3] Division Decision, *Ibid.*, pp. 21-42.
[4] *Abello vs. Commissioner of Internal Revenue,* G.R. 120721, February 23, 2005.

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice