Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

Third Division

MAIBARARA GEOTHERMAL, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 8871, 8937, 8999 & 9042

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

MAY 03 2018 2:33 p.m.

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RESOLUTION

RINGPIS-LIBAN, ***J.*:**

For resolution is respondent's **Motion for Reconsideration (Amended Decision of 27 December 2017)**, filed on January 22, 2018, with petitioner's **Comment/Opposition (To Respondent's Motion for Reconsideration dated January 22, 2018)**, filed on February 19, 2018.

Respondent seeks reconsideration of the Court's Amended Decision dated December 27, 2017, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration** is **PARTIALLY GRANTED**. Accordingly, the Decision of this Court dated August 2, 2017, is amended to read as follows:
>
> > '**WHEREFORE**, premises considered, the Petition for Review filed on August 18, 2014, on November 26, 2014, on February 25, 2015, and on May 13, 2015 are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO**

> **REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱7,286,210.93**, representing its unutilized input VAT on importation of goods (other than capital goods) and local purchases not directly related to RE development and conversion incurred in the four quarters of CY 2012, and attributable to its zero-rated sales for the first quarter of CY 2014.
>
> **SO ORDERED**.'
>
> **SO ORDERED**."

Respondent alleges that petitioner is not entitled to the refund of its input VAT on importations for taxable year 2012 since petitioner had no zero-rated sales in 2012 to which said input VAT can be attributed; that the Court relied on the arguments of petitioner in its Motion for Reconsideration that the refund is not on the VAT zero-rated sales of petitioner but refund of input taxes on the regular VAT rate of importations; that the claim for refund of unutilized input taxes is anchored on petitioner's zero rated sales/receipts which are not proven because there was no operation yet in 2012; that the operation only started on the 1st Quarter of 2014; that petitioner is not entitled to the refund of its input VAT on importations for taxable year 2012 since petitioner had no zero-rated sales in 2012 to which said input VAT can be attributed.

On the other hand, petitioner counter-argues that the Amended Decision dated December 27, 2017 has already attained finality considering that the Motion for Reconsideration filed by respondent, as a mere *pro forma* motion, did not toll the running of the period within which to perfect an appeal; that the notice of hearing attached to respondent's Motion for Reconsideration does not comply with Sections 4 and 5 of Rule 15 of the Rules of Court; that the motion does not state a specific date from which the three (3) days and ten (10) days respectively required by the Rules shall be reckoned; that petitioner is entitled to the Court's grant of ₱7,286,210.93 as refund for its unutilized input VAT on importation of goods (other than capital goods), local purchases not directly related to RE development and conversion incurred in the four quarters of the taxable year 2012; that the existence or presence of the zero-rated or effectively zero-rated sales need not be in the same period when the input taxes subject of the claim were incurred; that it had no zero-rated or effectively zero-rated sales during the first to fourth quarters of taxable year 2012 but was only able to make its first zero-rated sales of electricity generated from geothermal energy during the first quarter of taxable year 2014.

After consideration, this Court resolves to deny the instant motion for reconsideration.

In the case of *Cabrera vs. Ng*[1], the Supreme Court ruled that the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is not absolute, and shall be considered to have been substantially complied with when the adverse party had been afforded the opportunity to be heard through the pleadings filed in opposition to the motion. The pertinent portion of the said case reads:

> "The general rule is that the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process. The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein.
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> 'A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon.' 'Being a fatal defect, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency.'
>
> Nevertheless, the three-day notice requirement is not a hard and fast rule. **When the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with**. xxx." (*Emphasis supplied*)

In this case, respondent was able to attach a notice of hearing in the instant motion, only that there is no specific date indicated for the setting of the case. Also, petitioner was able to file its comment/opposition to the instant motion. Considering that petitioner was given an opportunity to be heard in this case, the purpose behind the three-day notice requirement is deemed fulfilled. Therefore, the instant motion for reconsideration is not a *pro forma* motion, and shall therefore be resolved by the Court.

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[1] G.R. No. 201601, March 12, 2014.

In the instant motion for reconsideration, respondent claims that petitioner is not entitled to the refund of its input VAT for taxable year 2012 since petitioner had no zero-rated sales in 2012 to which the said input VAT can be attributable.

Respondent anchors its allegation on the ruling of the First Division of this Court in the case of *Maibarara Geothermal, Inc. vs. Commissioner of Internal Revenue,* CTA Case Nos. 8699, 8732, 8771 and 8811, promulgated on August 18, 2017, which allegedly involves the same issue, the same parties but different taxable year, wherein the Court held that:

> "The thrust of the foregoing jurisprudence is the importance of having to show the presence of zero-rated or effectively zero-rated sales, to which the input VAT being refunded must be attributable. Simply put, when there is no zero-rated or effectively zero rated sales on the part of the refund claimant, input VAT is not refundable, or at the very least, is not yet refundable."

The factual circumstances of above-cited case and the instant case are not totally similar.

In the above-cited case and in the instant case, petitioner claims for the refund of input VAT incurred during the four (4) quarters of the taxable year 2011 and 2012, respectively. However, in the above-cited case, petitioner filed its administrative claim for refund on March 22, 2013, on June 24, 2013, on September 26, 2013, and on December 13, 2013, during the time when petitioner had no sales yet since it only started selling during the first quarter of 2014. Thus, the claim for refund was declared premature.

In this case, petitioner filed its administrative claims for refund at the time when it already had zero-rated sales to which its input tax can be attributable, specifically on March 31, 2014, June 30, 2014, September 29, 2014 and December 19, 2014[2].

In other words, unlike in the above-cited case, petitioner in this case already had zero-rated sales when it filed its administrative claims for refund of input taxes incurred during the taxable year 2012.

Furthermore, as sufficiently explained by petitioner in its comment, the timing difference between the period in which the input taxes were incurred and the first zero-rated sale is due to the fact that petitioner's power

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[2] Decision promulgated on August 2, 2017, docket, vol. VI, p. 2706.

plant/facilities were still being developed, constructed and installed during the taxable years 2011, 2012 and 2013 in order to make it operational so as to generate electricity from geothermal energy.

In the case of *San Roque Power Corporation vs. Commissioner of Internal Revenue*[3], the Court of Tax Appeals *En Banc* held that it is not the date when the purchases of goods and services were made that should matter, but rather, the date when the zero-rated sales were made because it is only at the time of such sale when petitioner can establish that the input taxes paid were in fact attributable to its zero-rated sales:

> "xxx Section 112 (A) of the NIRC of 1997 xxx mandates that in order to claim for a refund/tax credit of input VAT, there must still be zero-rated sales or effectively zero-rated sales to which the input VAT sought to be refunded are attributable. As correctly explained by the Court in Division, it is not the date when the purchases of goods and services were made that should matter, but rather, the date when the zero-rated sales were made because it is only at the time of such sale when petitioner can establish that the input taxes paid were in fact, either directly attributable or otherwise, allocable to its zero-rated sales."

Long settled is the requirement under Section 112(A) of the NIRC of 1997, as amended, that the input VAT sought to be refunded must be attributable to and dependent on the presence of zero-rated or effectively zero-rated sales.[4]

Considering that petitioner was able to prove the existence of zero-rated sale, the Court finds no reason to disturb the ruling in the assailed Amended Decision.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Amended Decision, respondent's **Motion for Reconsideration (Amended Decision of 27 December 2017)** is **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[3] CTA EB Case No. 248, September 20, 2007, (CTA Case No. 6916).
[4] *GST Philippines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 7718, June 23, 2010.

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice