REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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LEPANTO CONSOLIDATED MINING COMPANY, Petitioner,	**CTA Case No. 9101**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** APR 11 2019 . 9:07 am

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RESOLUTION

UY, J.:

For resolution is respondent's **"MOTION FOR PARTIAL RECONSIDERATION (Re: Decision Promulgated on 04 September 2018)"** filed on September 21, 2018, with petitioner's **"COMMENT/OPPOSITION (*To the Motion for Partial Reconsideration dated 19 September 2018*)"** filed on December 14, 2018, praying for the reconsideration and setting aside this Court's Decision dated September 4, 2018, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, the *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱17,592,729.68** representing the latter's unutilized input VAT attributable to its zero-rated sales for the four quarters of the year 2013.
>
> **SO ORDERED.**"

In the *Motion for Reconsideration*, respondent avers that this Court erred as follows:

1) In giving due course to the *Petition* despite failure to implead the real party in interest;
2) In ruling that petitioner's alleged input tax attributable to its zero-rated sales for taxable year 2013 were not carried over to the succeeding periods; and
3) In ruling that petitioner's alleged input tax in the amount of ₱17,592,729.68 is directly attributable to its zero-rated sales.

For its part, in its *Comment/Opposition*, petitioner counter-argues that this Court correctly held the following:

1) Respondent is the real party in interest and not the Commissioner of the Bureau of Customs (BOC), who is a mere colleting agent of respondent of the subject input value-added tax (VAT);
2) The input VAT attributable to petitioner's zero-rated sales for tax year 2013 were not carried-over to the succeeding quarters; and
3) Petitioner's input tax is directly attributable to its zero-rated sales.

THE COURT'S RULING

The instant *Motion for Reconsideration* lacks merit.

We maintain Our ruling that respondent is the real party in interest, not the Commissioner of the BOC.

Respondent's argument that this Court erred in giving due course to the *Petition for Review* despite the failure to implead the real party in interest, is a mere reiteration of a matter which has been already considered, weighed and resolved in the assailed Decision. Finding no compelling reason to reconsider, modify or reverse Our ruling that the Commissioner of the BOC is not the real party in interest in this case, We shall no longer belabor in this Resolution, to repeat the disquisitions made therein regarding the matter.

It was established, during trial, that the subject input VAT were not carried over to the succeeding periods.

As for respondent's assignment of error that this Court erred in ruling that petitioner's alleged input VAT attributable to its zero-rated sales for taxable year 2013 were not carried over to the succeeding periods, the same deserves scant consideration.

We adhere to Our findings as stated in the assailed Decision, to wit:

> "Although the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns[1], the same remained unutilized until it was deducted as "VAT Refund/TCC claimed" in its Quarterly VAT Return for the 3rd quarter of 2014[2], preventing the carry-over or application of the claimed input VAT in the next taxable quarters. Accordingly, the subject claim no longer formed part of the excess input VAT of ₱21,410,409.94[3] as of the 3rd quarter of 2014 which was carried over/applied to the succeeding 4th quarter of 2014."[4]

We cannot subscribe to respondent's contention that the VAT Returns for taxable year 2015 should have been presented by petitioner to prove the subject claim is no longer included in the *"Input Tax Carried Over from previous Period."*

There is no requirement in the law for Us to look into petitioner's VAT Returns for taxable year 2015 to confirm whether the input VAT being claimed was carried over to the said year. What is merely required under Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, is that the *"input tax has not been applied against* [the] *output tax"*. To the mind of the Court, it is sufficient that it is shown in at least two (2) succeeding Quarterly VAT Returns, which represent two (2) succeeding periods, that the input VAT being claimed was not applied to the output VAT, as We have held in the assailed Decision.

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[1] Exhibits "P-52" to "P-52-2".
[2] Exhibits "P-52-2".
[3] Line 29, Exhibit "P-52-2".
[4] Line 20A, Exhibit "P-52-3".

As a corollary, being the head of the Bureau of Internal Revenue, which is the repository of tax returns filed by taxpayers, respondent could have easily shown whether in the Quarterly VAT Returns filed by petitioner in taxable year 2015, the amount of input VAT being refunded were applied in the said year against its output VAT. However, as already noted in the assailed Decision,[5] respondent chose not present any evidence during trial.

Considering that respondent had access to petitioner's Quarterly VAT Returns filed in 2015, as head of the BIR, and that he still chose not to present the same, the presumption "[t]*hat evidence willfully suppressed would be adverse if produced*"[6] comes into play.

Thus, We maintain Our findings that the subject *"input tax has not been applied against* [the] *output tax"*.

The input VAT of petitioner is attributable to its zero-rated sales.

Lastly, respondent contends that this Court erred in ruling that petitioner's alleged input tax in the amount of ₱17,592,729.68 is directly attributable to its zero-rated sales. For easy reference, quoted herewith is respondent's arguments on the matter, to wit:

> "As can be seen above[7] – the law provides that for input taxes on purchase of goods – they must be a factor in the chain of production to be 'creditable'.
>
> Thus, the law provides that they are either: re-sold as the finished product; converted or forms part of the finished products; used as supplies in the business; materials utilized for a service provided; and capital equipment to produce products/ service.
>
> To reiterate, from the definitions provided by law, it is respondent's position that to be creditable, 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.

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[5] Minutes of the Hearing dated September 20, 2016, Docket, pp. 296 to 297.
[6] Section 3(e), Rule 131, Rules of Court.
[7] Referring to Section 110(A)(1)(a) of the NIRC of 1997, as amended.

After determining which input taxes are 'creditable', the law requires a second evaluation to determine which 'creditable' input taxes are 'attributable'. This means that the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'. There is nothing in the decision of the Honorable Court Third Division showing the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated."

Respondent misread the law.

Section 110 of the NIRC of 1997, as amended by Republic Act No. 9337, provides, in part, as follows:

"SEC. 110. *Tax Credits.* –

(A) *Creditable Input Tax.* –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions **<u>shall be creditable</u> against the output tax**:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code.

(b) Purchase of services on which a value-added tax has actually been paid.

xxx xxx xxx

> **The term 'input tax' means <u>the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person</u>.** It shall also include the transitional input tax determined in accordance with Section 111 of this Code." *(Emphases and underscoring supplied)*

Based on the foregoing, an input VAT evidenced by a VAT invoice or official receipt is creditable against the output VAT not only on the purchase or importation of goods *"(f)or conversion into or intended to form part of a finished product for sale including packaging materials"*, but also those for sale, for use as supplies in the course of business, and for use in trade or business for which deduction for depreciation or amortization is allowed under the NIRC.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[8]

To say that *"to be creditable, 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"* is not entirely consistent with the above-quoted Section 110. This is so because the said provision, as clearly stated, did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes, *inter alia*, purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed.

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[8] *Philippine International Trading Corporation vs. Commission on Audit*, G.R. No. 183517, June 22, 2010.

The term *"supplies"* means *"the quantity or amount (as of a commodity) needed or available."*[9] Thus, for the input VAT on the purchase or importation of supplies to be creditable against the output VAT, it need only that such supplies are for use in the course of business. As for the creditability of the input VAT on the purchase or importation of goods for which depreciation or amortization is allowed, otherwise known as *"capital goods"*, *"which are depreciable assets for income tax purposes"*,[10] it is only required that the said purchase or importation is intended for use in trade or business.

As already noted in the assailed Decision, the input VAT claimed by petitioner for the year 2013 in the amount of ₱19,565,102.32,[11] arose from its purchases of capital goods and importations of goods other than capital goods.

Petitioner's witness, Cherry H. Tan, testified as to the intention why the said purchases of capital goods and importations of goods other than capital goods were made, to wit:

> "Q8: How do you know which materials and equipment should be purchased or imported so as to enable Lepanto to conduct its mining operations?
> A8: ***We purchase what is needed by the end-users of the company, such as our Mine Division and Mill Division***. They furnish our department a purchase requisition specifying the materials and equipment that they need. Upon receipt of the purchase requisition, we determine if such items or equipment are available locally. If none, we import the items or equipment.
>
> Q9: ***What are the functions of these Mine and Mill Divisions?***
> A9: ***The Mine Division extracts the gold ores from the underground mine. They forward the extracted gold ores to the Mill Division for refining and processing into bullions.***
>
> Q10: Are your familiar with the present case?
> A10: Yes.

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[9] The Merriam-Webster Dictionary © 2005, p. 494.
[10] Section 4.110-3, Revenue Regulations No. 16-2005.
[11] With discrepancy of ₱0.02 as against the instant claim for refund which is ₱19,565,102.30.

Q11: Why?
A11: I am familiar because it was I who took charge of the purchases and importations by Lepanto of the materials and equipment **in 2013**, from which the input VAT being claimed as refund in this case arose.

Q12: What constitute the said importations in **2013**?
A12: They are materials and equipment necessary in the mining operations of Lepanto in Mankayan, Benguet. Specifically, the imported items are listed in a summary denominated as 'Imports Transactions'."[12] *(Emphasis and italics supplied)*

Based on the foregoing uncontroverted testimony, both the capital goods purchased and the imported goods of petitioner are for use in the course of business or in its trade or business. Thus, the input VAT on the said purchases and importation are creditable against the output VAT of petitioner, since it fulfills the requirements of Section 110 of the NIRC of 1997, as amended.

In the same vein, We likewise do not subscribe to respondent's stance that the input VAT must be "attributable" to the zero-rated sales, in that *"the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'."*

The word *"attribute"*, the adjective form of which is *"attributable"*, is defined as *"to explain as to cause or origin"*, or simply, to *"ascribe"*.[13] Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales.

Correspondingly, since in this case, it was established that petitioner is not engaged in any other business, except mining,[14] which results in its having zero-rated sales, and considering that the subject purchased and imported goods, from which petitioner's input VAT arose, are for use in the course of its business or in its trade or business, such input VAT is attributable to the said zero-rated sales.

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[12] Exhibit "P-56", Docket, pp. 263 to 264.
[13] The Merriam-Webster Dictionary © 2005, p. 31.
[14] Q7&A7, Exhibit "P-56", Docket, p. 263.

WHEREFORE, in light of the foregoing considerations, respondent's *Motion for Partial Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice