REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

MAERSK GLOBAL SERVICE CENTRES (PHILIPPINES) LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9432

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
MAR 02 2020
2:20 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before this Court is Respondent's "Motion for Partial Reconsideration (Re: Decision Promulgated on 23 October 2019)", filed on November 08, 2019 with Petitioner's "Comment (To Motion for Reconsideration dated November 8, 2019)" filed on December 06, 2019.

In his Motion, Respondent seeks partial reconsideration of the Decision dated October 23, 2019, in granting Petitioner's claim for refund of its unutilized input value-added tax ("VAT") in the reduced amount of Php32,744,472.01, the dispositive portion of which reads as follows:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, Respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner in the total amount of **Php32,744,472.01,** representing its excess and unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2014.

SO ORDERED."

In assailing the above ruling, Respondent raised the following grounds, *viz.*:

1) The honorable Court erred in ruling that Petitioner's alleged input tax attributable to its zero-rated sales for the period January 1, 2014 to December 31, 2014 remained unutilized despite being carried over to the succeeding periods; and

2) The honorable Court erred in ruling that Petitioner's input tax in the amount of php32,744,472.01 is directly attributable to its alleged zero-rated sales.

With regard to the first ground, Respondent insists that contrary to the findings of this Court, the claimed input tax was really carried-over to the succeeding quarters. This is because Petitioner failed to present all the VAT Returns for taxable year 2015 which would tend to prove that the subject claim was not actually utilized for the subject year. Thus, by failing to do so, Respondent states that this Court cannot explicitly state that the same remained unutilized based solely on the first quarter VAT Return for taxable year 2015. Stated simply, Respondent asserts that all the VAT Returns for taxable year 2015 should have been presented by Petitioner to prove that the subject claim is no longer included in the "Input Tax Carried Over from previous Period".

As to the second ground, Respondent claims that it is erroneous to rule that the substantiated input taxes incurred by Petitioner are attributable to the alleged zero-rated sales without sufficient determination of attributability. He argues that there is nothing in the Decision explaining the direct connection of the purchases or input tax to the finished product or service which were allegedly zero-rated sales. As such, Respondent posits that the input taxes must come from purchases of goods and services that form part of the finish product or service of the taxpayer, in the sense that the connection between the purchases and the finished product must be concrete and not imaginary or remote.

Respondent further cites the case of *Taganito Mining v. Commissioner of Internal Revenue (CTA Case No. 8680, September 14, 2017)* and *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (G.R. No. 159471, January 26, 2011),* to bolster its argument regarding the requirement of "direct attributability".

On the other hand, in its comment, Petitioner avers that the grounds raised by Respondent in its Motion are clearly false and misleading. A simple review of the records of the case will reveal that the duly commissioned Independent Certified Public Accountant ("ICPA") verified that the subject refund claim for input tax was not utilized for the taxable year 2015, and that, the same were directly attributable to its zero-rated sales for taxable year 2014.

Petitioner reiterates the conclusion of the ICPA as stated in the ICPA Report that the amount of the claim was not carried over to the 1st Quarter 2015 VAT Return and in the succeeding VAT Returns since the company's management have determined that the excess input tax attributable to the zero-rated sales/receipts amounting to Php34,088,112.64 would not be utilized against output tax in the succeeding periods.

More so, Petitioner claims that contrary to Respondent's assertions, the quarterly VAT Returns covering the year 2015 up to the second quarter of 2017 and monthly VAT Returns for the months July and August 2017 were actually offered in evidence as Exhibits "P-35.1" to "P-36.8" and were duly identified by the ICPA in his judicial affidavit. Thus, Respondent's allegations are false, reckless and does not deserve any consideration.

After due consideration, this Court finds Respondent's Motion for Partial Reconsideration bereft of merit.

At the onset, this Court cannot find the basis in Respondent's contention that Petitioner failed to present all the VAT Returns for the taxable year 2015 to prove that the subject claim was not utilized for the taxable year 2015. Obviously, Respondent overlooked the fact that Quarterly VAT Returns for the period January to December of 2015 and 2016 were offered in evidence as Exhibits "P-35.1" to "P-35.16", as well as the Quarterly VAT Returns for the 1st and 2nd quarters of 2017 and Monthly VAT Returns for July and August 2017 were also offered as Exhibits "P-36.1" to "P-36.8", which were all admitted and considered by the Court in the Resolutions dated February 2, 2018 and June 19, 2018, respectively.

Moreover, aside from the findings made by the court-commissioned ICPA, this Court also verified that the excess input taxes claimed by Petitioner for taxable year 2014 were not applied against any of its output VAT liability.

As to the second ground raised by Respondent, his argument that nothing in the assailed Decision shows the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated has no basis in fact and in law.

Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides for the tax credit/refund of creditable input VAT attributable to zero-rated or effectively zero-rated sales, to wit:

SECTION 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, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *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(B)(6), the input taxes shall be allocated ratably between his zero-rated and nonzero-rated sales.

The above provision shows that the law merely states that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. Notably, the above-quoted provision does not specifically require that the refundable creditable input tax should be "directly attributable" to such sales.

Furthermore, Respondent's reliance in the *Atlas Case* 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*[1], as instructive on the matter on hand:

> "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 **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund.' (Emphasis and underscoring supplied)

1 CTA EB Case Nos. 1777 & 1779, August 1, 2019.

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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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.

Considering that the taxable year under consideration is 2008, the provisions of RR Nos. 5-87 and 3-88, as applied to the Atlas cases, may no longer be validly applied to the instant case."

Applying the above to the present case, the excess valid input VAT paid by Petitioner in the course of its trade or business are considered to be entirely attributable to its zero-rated sales to its sole client A.P. Moller Maersk A/S, considering the absence of other taxable or exempt sales that qualifies for VAT zero-rating for taxable year 2014.

Accordingly, in view of the foregoing, the Court finds that Respondent failed to raise a new or substantial matter, or compelling reason, to justify the reversal or modification of this Court's findings in the assailed Decision.

WHEREFORE, premises considered, Respondent's "Motion for Partial Reconsideration (Re: Decision Promulgated on 23 October 2019)" is hereby **DENIED** for lack of merit.

SO ORDERED.

Ma. Belen S

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ERLINDA P. UY Associate Justice	**MARIA ROWENA MODESTO-SAN PEDRO** Associate Justice