REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

VESTAS SERVICES PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9480**
	Members:
- versus -	**CASATAÑEDA, JR.**, *Chairperson*, **MINDARO-GRULLA** *and* **BACORRO-VILLENA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 13 2020 8:38 am

x - x

RESOLUTION

MINDARO-GRULLA, J.:

Before this Court is respondent's **Motion Reconsideration**, filed on October 8, 2019 and received by this Court on October 15, 2019, with petitioner's **Comment/Opposition [To the Petitioner's Motion for Reconsideration dated 8 October 2019]**, filed on November 13, 2019.

In his Motion, respondent seeks reconsideration of the Decision promulgated on September 20, 2019, in finding that petitioner sufficiently proved its entitlement to refund its unutilized excess input value-added tax (VAT), the dispositive portion of which reads as follows:

> **WHEREFORE**, the instant 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 **₱134,298,376.32** representing unutilized excess input VAT attributable to its zero-rated sales/receipts for 2nd Quarter of CY 2014.

SO ORDERED.

Respondent argues that the evidence presented by petitioner, *i.e.*, the certificates of creditable withholding taxes withheld, which were accomplished by its withholding agents, showing the amount deducted and withheld from petitioner's income in support of the tax refund, does not constitute conclusive evidence of payment and remittance to the Bureau of Internal Revenue (BIR). He also claims that petitioner failed to present the various payors and withholding agents in order to establish the fact of withholding and remittances made.

Thus, respondent maintains that since a claim for refund/tax exemption is by its nature a tax exemption, and is construed in *strictissimi juris* against the taxpayer-claimant, the fact that petitioner failed to present proof of actual remittance to the BIR of the taxes withheld, as well as testimonial evidence of the payors or withholding agents to establish the fact of withholding and remittance, the present claim must therefore fail.

On the other hand, in its comment, petitioner asserts that the withholding and remittance of creditable withholding taxes are not relevant in a judicial claim for VAT refund. Nowhere in Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, and Revenue Regulations (RR) No. 16-2005, the applicable law and rule for the present case, does it provide that the fact of withholding must first be established before a claim for refund be granted. Nonetheless, petitioner claims that respondent's Motion should still be denied for being *pro forma* as it failed to comply with the three-day notice rule under Section 4 of Rule 15 of the Rules of Court.

After due consideration, respondent's Motion for Reconsideration is bereft of merit.

As correctly pointed out by petitioner, the present case involves a claim for refund of excess or unutilized input VAT attributable to zero-rated sales. As such, the applicable law governing the issue in this case is Section 112(A) of the NIRC of 1997, as amended. And, as previously held in the Decision assailed by respondent, **only** the following requisites must be established in order to be entitled to refund or issuance of tax credit, *viz.*:

L

1. the taxpayer-claimant must be VAT-registered;

2. there must be zero-rated or effectively zero-rated sales;

3. that input taxes were incurred or paid;

4. that such input taxes are attributable to zero-rated or effectively zero-rated sales;

5. that the input taxes have not been applied against output taxes during and in the succeeding quarters; and,

6. the claim for refund was filed within the prescriptive period bot in the administrative and judicial levels.

In view of the foregoing, the Court finds that respondent failed put forth any compelling reason to justify the reversal or modification of the assailed Decision.

WHEREFORE, respondent's **Motion Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice