REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

NEW YORK BAY PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9896**
	Members:
- versus -	**UY,** *Chairperson*, **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 14 2023 8:50 a.m.

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RESOLUTION

UY, J.:

For resolution is respondent's ***Motion for Reconsideration (Amended Decision dated September 12, 2022)*** filed via registered mail on October 12, 2022, with petitioner's ***Comment (Re: Respondent's Motion for Reconsideration dated October 11, 2022)*** filed on November 29, 2022.

In his *Motion*, respondent prays that the Court's Decision dated January 26, 2022 and the Amended Decision dated September 12, 2022 be reversed and set aside, the dispositive portion of which reads:

Decision dated January 26, 2022

> "**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 **₱12,445,765.78** representing the latter's unutilized input VAT attributable to its zero-rated sales for the four quarters of the CY 2016.
>
> **SO ORDERED**."

Amended Decision dated September 12, 2022

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

On the other hand, petitioner's *Motion for Partial Reconsideration* is **GRANTED**. Accordingly, the assailed Decision dated January 26, 2022 is hereby **MODIFIED** to read as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the Petition for Review is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱44,226,338.64** representing petitioner's unutilized input VAT attributable to its zero-rated sales for the four quarters of the CY 2016.
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> **SO ORDERED.**"

Respondent's Motion for Reconsideration:

Respondent maintains his assertion that petitioner failed to submit the complete supporting documents upon submission of its administrative claim for VAT refund, thus failing to comply with the mandatory requirements under Section 112 (C) of the NIRC of 1997, as amended, and Revenue Memorandum Circular (RMC) No. 54-2014.

Allegedly, petitioner did not comply with the invoicing and accounting compliance required by the NIRC. Hence, its application for tax credit or refund should be denied.

Respondent further contends that petitioner's claim for refund must fail for failure to exhaust administrative remedies as the Bureau of Internal Revenue (BIR) was not given an opportunity to examine the claim and considering that petitioner has yet to submit the documents required by the BIR at the time pursuant to RMC No. 54-2014 which mandates a taxpayer requesting for refund to be subjected to audit/evaluation.

Petitioner's Comment on respondent's Motion for Reconsideration:

Petitioner submits that respondent failed to raise in the instant Motion any new and compelling arguments or cite specific findings or conclusions in the Amended Decision that are generally contrary to law or not supported by evidence.

Nevertheless, petitioner counter-argues that there is no basis in respondent's argument that petitioner failed to submit complete supporting documents together with its administrative claim for refund. As established during trial, petitioner filed with the BIR, RDO No. 43A its administrative claim for refund of excess and unutilized input VAT for the four quarters of CY 2016 on March 28, 2018 together with the complete supporting documents as provided under RMC No. 54-2014.

Petitioner also asserts that it was able to comply with all the requisites for the refund of its excess and input VAT for the four quarters of CY 2016.

Lastly, according to petitioner, there is no basis for respondent's argument that the Petition for Review should be dismissed on the ground of failure to exhaust administrative remedies. Allegedly, respondent was given an opportunity to examine and rule upon petitioner's administrative claim for refund, and that his decision denying petitioner's VAT refund claim may be appealed to this Court as a matter of right pursuant to Section 112(C) of the NIRC of 1997, as amended.

THE COURT'S RULING

After careful and thorough consideration of respondent's arguments raised in the instant motion, the Court find that respondent failed to raise any new and substantial arguments that would warrant a reconsideration of the Court's assailed Amended Decision.

As we have thoroughly discussed in the assailed Amended Decision, the matter regarding the authority of respondent to require additional supporting documents necessary to determine the taxpayer's entitlement to a refund of input tax has been settled by the Supreme Court in the cases of *Pilipinas Total Gas, Inc. v.*

Commissioner[1] and *Zuellig-Pharma Asia Pacific Ltd. Phils. ROHQ v. Commissioner of Internal Revenue.*[2]

In said cases, the Supreme Court held that the prevailing rule is that for administrative claims filed on or after June 11, 2014, or upon the effectivity of RMC No. 54-2014, such as the instant case, the reckoning point of the 120-day period begins from the filing of the administrative claim with the BIR. Part II of RMC No. 54-2014 reads as follows:

> "II. Filing and Processing of Administrative Claims — **<u>The application for VAT refund/tax credit must be accompanied by complete supporting documents as enumerated in Annex "A" hereof</u>**. **<u>In addition, the taxpayer shall attach a statement under oath attesting to the completeness of the submitted documents (Annex "B")</u>**. The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
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> **Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer**. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant." (*Emphases and Underscoring Added*)

Based on the foregoing, it is clear that pursuant to RMC No. 54-2014, all complete documents are to be submitted upon the filing of the taxpayer's administrative claim for refund.[3] mf

[1] G.R. No. 207112, December 8, 2015.
[2] G.R. No. 244154, July 15, 2020.
[3] *Zuellig-Pharma Asia Pacific Ltd Phils ROHQ vs. Commissioner of Internal Revenue*, G.R. No. 244154, July 15, 2020.

In this case, records show that petitioner filed its administrative claim for refund of unutilized input VAT (*Application for Tax Credits/Refund – BIR Form No. 1914*) for the four quarters of CY 2016 on March 28, 2018,[4] together with a *Cover Letter* indicating the submission of its supporting documents,[5] and accompanied by a *Sworn Certification*[6] stating that it submitted complete documents for purposes of processing its claim for VAT refund for the period of from January 1, 2016 to December 31, 2016.

Thus, contrary to respondent's argument that he was deprived of an opportunity to examine petitioner's claim since petitioner has yet to submit the documents required by the BIR, petitioner has in fact complied with the mandatory requirements under RMC No. 54-2014, specifically that in its administrative claim for refund, it was able to submit its supporting documents and also file a statement under oath attesting to the completeness of the submitted documents.

As to respondent's argument that petitioner did not comply with the invoicing and accounting compliance required by the NIRC of 1997, as amended, the same has no merit.

The Court finds no reason to revisit its findings thereon since respondent failed to pinpoint specific evidence, such as official receipts or sales invoices, which the Court should not have favorably considered, or that which the Court erroneously considered as compliant with the invoicing requirements provided under the law, rules, and regulations. Hence, the Court cannot give credence to respondent's bare allegations and general statements without proof to debunk the findings of the Court. Basic is the rule that bare allegations, unsubstantiated by evidence, are not equivalent to proof, *i.e.,* mere allegations are not evidence.[7]

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[4] Exhibit "P-8", Docket – Vol. 2, p. 536.
[5] Exhibit "P-7", Docket – Vol. 2, pp. 532 to 534.
[6] Exhibit "P-7-a", Docket – Vol. 2, pp. 532 to 534.
[7] *Mirasol Castillo vs. Republic of the Philippines and Felipe Impas*, G.R. No. 214064, February 6, 2017.

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice