REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

OCEANAGOLD (PHILIPPINES), INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NOS. 9207, 9277 & 9416

Members:

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

Promulgated:

OCT 2 1 2021
2:06 p.m.

x -- x

RESOLUTION

RINGPIS-LIBAN, J.:

Submitted before the Court are the following:

1. respondent's **Motion for Partial Reconsideration (Re: Amended Decision promulgated 3 February 2021)** filed on February 24, 2021, with petitioner's **Comment/Opposition [To Respondent's Motion for Partial Reconsideration (re. Amended Decision promulgated 3 February 2021) dated February 24, 2021]** filed on June 21, 2021; and

2. petitioner's **Motion for Reconsideration [of Amended Decision dated February 3, 2021] with Motion to Present Additional Evidence** filed on March 2, 2021, without respondent's comment as per Records Verification Report dated June 28, 2021.

On February 3, 2021, the Court promulgated an Amended Decision for the present consolidated cases, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the *Petitions for Review* are **PARTIALLY GRANTED**. Accordingly, respondent is **DIRECTED TO REFUND** to petitioner the amount of **₱32,319,333.57**, representing the latter's

> unutilized excess input VAT arising from its domestic purchases and importation of goods (other than capital goods), domestic purchases of services, and purchases of capital goods which are attributable to zero-rated sales for the 3rd and 4th quarters of TY 2013 and 1st Quarter of TY 2014.
>
> **SO ORDERED.**"

Undaunted, both parties again filed their respective motions for reconsideration of the above Amended Decision.

Respondent's Motion for Partial Reconsideration

In his Motion, respondent reiterates that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Respondent avers that no attributability was established between the input tax on purchases vis-a-vis the zero-rated sales of petitioner. He further states that petitioner must establish its claim by the quantum of evidence and not by assumption.

Respondent anchors his arguments in the Court of Tax Appeals (CTA) *en banc* cases of *Commissioner of Internal Revenue v. Coral Bay Nickel Corporation and Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, CTA EB Nos. 1735 and 1737, July 18, 2019*, wherein the CTA *en banc* ruled that in order that input taxes may be refunded, the same should be directly attributable to its zero-rated sales.

Respondent further cited that the value-added tax (VAT) system was adopted from Europe and as it works in Europe, not all input tax from purchases by a business is creditable as input tax –only those "related" to the supplies made can be claimed. In this regard, respondent claims that there is nothing in the assailed Decision which discussed the direct attributability of the purchases or input tax to the finished product whose sale is subjected to VAT at zero percent rate.

On the other hand, in its Comment, petitioner submits that respondent's Motion should be denied outright for being a pro-forma as it contains a mere rehash and repetition of the argument asserted in his Motion for Partial Reconsideration (Re. Decision promulgated 24 June 2020) dated September 9, 2020 which was already considered, analyzed, and passed upon by the Court in the Amended Decision.

Petitioner further argues that there is nothing in Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, that requires the input tax to be directly attributable to zero-rated sales in order for it to be creditable or refundable. In fact, petitioner points out that Section 112(A) of the NIRC of 1997 in relation to Section 110(A)(3), allows as tax credit an allocable portion of taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales.

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

To further elaborate the discussion in the Amended Decision, respondent's allegation that no attributability was established between the input tax on purchases vis-à-vis the zero-rated sales, the Court would like to emphasize that the law does not limit input taxes to those purchases that only form part of the finished product of the taxpayer.

Section 112(A) of the NIRC of 1997, as amended, allows the tax credit/refund of creditable input VAT attributable to zero-rated or effectively zero-rated sales, thus:

> "**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:** xxx."

Relative thereto, Section 110(A)(3)(b) of the NIRC of 1997, as amended, provides:

> "**SEC. 110.** Tax Credits. –
>
> (A) Creditable Input Tax. –

x x x

> (3) A VAT-registered person who is also engaged in transactions not subject to the value-added tax shall be allowed tax credit as follows:
>
> (a) Total input tax which can be directly attributed to transactions subject to value-added tax; and,
> (b) **A ratable portion of any input tax which cannot be directly attributed to either activity.**" *(Emphasis Supplied)*

As shown above, the foregoing provisions does not specifically require that the refundable creditable input tax should be "directly attributable" to zero-rated sales. It is clearly stated that where the amount of the allowable input tax paid cannot be directly and entirely attributed to any one of the transactions, it shall **be allocated proportionately** to each category of transaction/sale/activity.

Accordingly, respondent failed to raise any substantial matter or compelling reason to justify the reversal or modification of the assailed Amended Decision.

That having been settled the Court shall now proceed to address petitioner's Motion.

Petitioner's Motion for Reconsideration

In his Motion, petitioner urges the Court to take a second hard look into the established facts, evidentiary rules, and jurisprudence on the matter which were not considered in the said Amended Decision. Petitioner again prays that the Court reconsider the Amended Decision in the light of the following arguments set forth below as follows:

I. The Honorable Court erred in ruling that petitioner's sales amounting to ₱4,681,519,998.33 are outside the period of claim.

II. The Honorable Court erred in disallowing the input VAT in the amount of ₱14,875,604.42 for failure of the suppliers to indicate the term 'valid until October 31, 2013' in VAT invoice or Official Receipt.

As to the first argument, petitioner maintains that the sale and actual shipment of its minerals, as evidenced by the bills of lading, amounting to ₱4,681,519,998.33 were made within the period of claim.

Petitioner reiterates that, due to the peculiar nature of the export sale of minerals, there would invariably be instances where a sales invoice is issued in a quarter different from the quarter when the actual shipment of minerals took place as indicated in the bill of lading. For this reason, petitioner avers that the presentation of the provisional invoices is not mandatory for refund of input VAT attributable to export sale of goods such as minerals.

Citing again the CTA cases of *Philex Mining Corporation v. Commissioner of Internal Revenue, CTA Case Nos. 7528 and 7564, February 9, 2010,* (*"Philex mining"* case hereafter) and *Phil. Gold Processing & Refining Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 1670, July 9, 2018*, petitioner submits that the bill of lading should be regarded as the actual date of export sale of mineral products for purposes of determining compliance with the requirements for refund of input VAT attributable to zero rated export sales.

Guided by the foregoing jurisprudence, petitioner insists that the bills of lading relevant to the present consolidated cases are dated December 28, 2013, January 24, 2014, February 6, 2014, February 26, 2014, March 27, 2014, and March 28, 2014. As such, the said bills of lading have sufficiently established that petitioner's export sales in the amount of ₱4,681,519,998.33 were clearly made within the period of claim, or during the 3rd and 4th quarters of taxable year 2013 and 1st quarter of taxable year 2014.

As to the second argument, petitioner reiterates that the input VAT amounting to ₱14,875,604.42 was due and likewise paid during the period of claim.

Petitioner points out that nowhere in the provisions of the NIRC of 1997, as amended, or Revenue Regulations (RR) No. 16-2005 require that the phrase *"valid until October 31, 2013 only"* be stamped or printed on the face of the invoice or official receipt in order for a taxpayer to be able to validly claim an input VAT refund or tax credit certificate. Petitioner continues that it is only by virtue of Revenue Memorandum Circular (RMC) No. 52-2013, which unduly expanded Section 113 of the NIRC of 1997, as amended, and RR No. 16-05 by requiring additional information to be stamped on the receipts and invoices. Thus, petitioner urges the Court to examine RMC 52-13 in light of the statutory requirements under Section 113 of the NIRC of 1997, as implemented by RR 16-2005, which does not require the phrase *"valid until October 31, 2013 only"* to be stamped or printed on the face of the invoice or official receipt.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

As to petitioner's argument that the sale and actual shipment of petitioner's minerals as evidenced by the bills of lading, amounting to

₱4,681,519,998.33 were made within the period of claim, the same was already considered and passed upon by this Court in the Amended Decision.

To clarify, in the *Philex Mining case*, the duly issued provisional invoices, aside from the final invoices that were submitted, the Court ruled that the final invoices issued by Philex Mining Corporation were merely additional evidence to support its claimed zero-rated sales. Therefore, the ruling of the Court in the said case was premised on the fact that petitioner's export sales were duly supported by bills of lading **and** provisional invoices issued upon shipment of the mineral products. Unfortunately, in the present consolidated cases, no provisional invoices were presented by petitioner – it failed to present the alleged provisional invoices it issued during the trial.

With regard to petitioner's argument that nowhere in the provisions of the NIRC of 1997, as amended, and/or RR No. 16-2005 require that the phrase "valid until October 31, 2013 only" be stamped or printed on the face of the invoice or official receipt in order for a taxpayer to be able to validly claim an input VAT refund or tax credit certificate, the same has likewise already been addressed in the assailed Amended Decision.

Again, the Court upholds that the requirement under RMC No. 52-2013 that "the term *valid until October 31, 2013 only* shall be stamped prominently on the face of the receipts or invoices (original and duplicate copies) so that it can still be used until October 31, 2013, otherwise, no deduction and input tax may be claimed using these receipts/invoices", is a valid requirement, since it is not in contrast with the provisions of the NIRC of 1997, as amended. The questioned RMC was merely issued to clarify the validity of Unused/Unissued Principal and Supplementary Receipts/Invoices Printed Prior to January 18, 2013.

In the case of *La Suerte Cigar and Cigarette Factory, et al., v. Court of Tax Appeals, et al.,*[1] the Supreme Court opined that when an administrative agency renders an opinion by means of a circular or memorandum, it merely interprets a preexisting law. Construction by an executive branch of government of a particular law although not binding upon the courts must be given weight as the construction came from the branch of government called upon to implement the law.

Accordingly, the said RMC must be accorded with respect like any other administrative issuance since it does not contradict the standards that the law prescribes but was only issued for the sole purpose to carry out the provisions of the Tax Code.

---

[1] G.R. No. L-36130, January 17, 1985.

Petitioner's Motion to Present Additional Evidence

In any case, petitioner claims that for the complete ascertainment of truth and in the interest of substantial justice, it begs the indulgence of the Court to set the case for additional hearing to afford petitioner an opportunity to present the pertinent provisional invoices as warranted.

Unfortunately, this Court is not swayed.

Verily, petitioner's Motion to Present Additional Evidence for the presentation of the provisional invoices is equivalent to a Motion to Re-open. In this regard, a motion to reopen may properly be presented only after either or both parties have formally offered, and closed their evidence, but before judgment. The reopening of a case for the reception of additional evidence after a case has been submitted for decision but before judgment is actually rendered is, it has been said, controlled by no other rule than that of the paramount interests of justice, resting entirely in the sound judicial discretion of a Trial Court; and its concession, or denial, by said Court in the exercise of that discretion will not be reviewed on appeal unless a clear abuse thereof is shown.[2]

Although Section 8 of RA No. 1125, as amended, creating the Court of Tax Appeals, expressly provides that proceedings before this Court shall not be governed strictly by technical rules of evidence, the same should still be balanced considering that technical rules may be relaxed only for the furtherance of justice and to benefit the deserving. In the case of *Ma. Rosario Suarez v. Judge Villarama, Jr., et al.,*[3] the Supreme Court had the opportunity to rule that:

> "It is an accepted tenet that rules of procedure must be faithfully followed **except only when, for persuasive and weighting reasons**, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal interpretation of the rules of procedure, **however, should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.**" *(Emphases Supplied)*

Incidentally, this Court finds petitioner's failure to present the provisional invoices for the reason that it is not mandatory for claims for refund of input VAT attributable to export sale of goods does not qualify as mistake or excusable negligence. Lest it be known that the additional evidence sought to be presented by petitioner falls squarely as forgotten evidence. Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer

[2] *Ramon J. Alegre v. Hon. Manuel T. Reyes, et al.*, G.R. No. L-56923, May 9, 1988.
[3] G.R. No. 124512, June 27, 2006.

oversight or forgetfulness of the party or the counsel. Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.[4]

As previously stated in the Amended Decision, if there were in fact provisional invoices issued, as testified by petitioner's Finance Manager, Ms. Josefina Mallari, petitioner should have presented and formally offered the same during the trial to prove that the supposed zero-rated sales were all dated within the period of claim. However, petitioner failed to present the same. As such, considering that the burden of proof to establish the right to a refund lies with the taxpayer-claimant who must show compliance with the statutory requirements of the NIRC of 1997, as amended, and existing jurisprudence, the Court finds no persuasive reason to grant petitioner's Motion to Present Additional Evidence.

All told, there being no new matter or substantial issue raised by the parties in their respective Motions for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Amended Decision dated February 3, 2021.

WHEREFORE, premises considered petitioner's Motion for Reconsideration [of Amended dated February 3, 2021] with Motion to Present Additional Evidence and respondent's Motion for Partial Reconsideration (Re: Amended Decision promulgated 3 February 2021) are both **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

---

[4] *Office of the Ombudsman, et al., v. Carmencita D. Coronel*, G.R. No. 164460, June 27, 2006.