REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA *EB* NO. 2082** *(CTA Case No. 9496)*
-versus-	Present: **DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., *Respondent.*	Promulgated: FEB 03 2021 2:25 p.m.

x -- x

RESOLUTION

MODESTO-SAN PEDRO, J.:

For resolution is petitioner's **Motion for Reconsideration (Re: Decision promulgated 21 July 2020),** (hereinafter referred to as "Motion") posted on 27 August 2020, with respondent's **Comment (Re: Motion for Reconsideration dated August 25, 2020)**, (hereinafter referred to as "Comment") filed on 26 October 2020.

In his Motion, petitioner assails the Court *En Banc*'s Decision, promulgated on 21 July 2020, which denied his Petition for Review for lack of merit. The dispositive portion is hereby quoted to wit:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision promulgated on 12 February 2019 and Resolution dated 28 May 2019 are hereby **AFFIRMED**.
>
> **SO ORDERED."**

Petitioner insists that respondent is not entitled to the refund awarded. He argues that respondent failed to establish that its input VAT is directly attributable to its zero-rated sales. On this note, he contends that the assailed Decision should be reversed and set aside and another one be rendered denying the entire claim.

He also alleges that the Court *En Banc*'s reliance on respondent's VAT returns in ruling that the subject input VAT has not been applied against respondent's output VAT is erroneous. He contends that the VAT returns are self-serving declarations that should not be relied upon until verified by petitioner.

Meanwhile, respondent counters that the "direct attributability" argument of petitioner is not supported by law or jurisprudence. It opines that ***Section 110(B) of the National Internal Revenue Code of 1997, as amended (hereinafter referred to as the "Tax Code")*** merely requires a taxpayer to prove that the excess input tax claimed is due or related to a zero-rated activity.

Respondent argues that although VAT returns are self-declarations, these documents enjoy the presumption of correctness. It contends that the VAT returns were prepared in good faith under the pain of perjury and were duly verified by respondent's witness. Likewise, he points out that the Court-commissioned Independent Certified Public Accountant ("ICPA") was able to establish that its input VAT remained unutilized.

Based on the foregoing arguments, the Court *En Banc* finds the petitioner's contention without merit.

Nothing in the Tax Code or jurisprudence supports petitioner's argument that the input VAT needs to be directly attributable to the taxpayer's zero-rated sale in order for it to be creditable or refundable.

As pointed-out in the assailed Decision, the rule requiring that the input VAT must be directly attributable to the taxpayer's zero-rated sales is based on old regulations, specifically, Revenue Regulation ("RR") No. 5-87,[1] as amended by RR No. 3-88,[2] which had long been abandoned by the effectivity of RR No. 14-2005.[3]

---

[1] Value-Added Tax, 1 September 1987.
[2] Revenue Regulations amending Sections 16 and of Revenue Regulations No. 5-87, 7 April 1988.
[3] Consolidated Value-Added Tax Regulations of 2005, 22 June 2005.

Furthermore, the issue raised by petitioner is not novel and had already been addressed by this Court in numerous cases, one of which is the case of ***Deutsche Knowledge Services Pte. Ltd. V. Commissioner of Internal Revenue***,[4] where this Court ruled, to wit:

> "The CIR's insistence 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. **<u>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; as well as purchase of services for which VAT has been actually paid.</u>**
>
> **Accordingly, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, the same may be creditable against the output VAT.**
>
> We likewise do not find merit in the CIR's allegation that for an input tax to be attributable to zero-rated sales, it must be shown that "the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'".
>
> xxx xxx xxx
>
> Based from the foregoing, **<u>creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero- rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionally on the basis of the volume of sales. Evidently, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct</u>**.
>
> Moreover, the word "attribute", the adjective form of which is "attributable", is defined as "to explain as to cause or origin", or simply, to "ascribe". 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. Accordingly, We sustain the Court in Division's ruling that is it not required that the claimed input tax be directly attributable to zero- rated sales in order to be creditable."[5]

Likewise, the Court *En Banc* finds no merit in the contention of petitioner that respondent's VAT Returns are insufficient evidence to prove that the input VAT remained unutilized in the succeeding taxable quarters.

---

[4] CTA *EB* Nos. 1917 and 1919, 5 February 2020.
[5] Emphasis supplied.

First, in the case of ***Commissioner of Internal Revenue v. CBK Power Company Limited***,[6] this Court had already recognized VAT Returns as competent evidence in proving that the input VAT has not been applied against the output VAT.

Second, tax returns filed with the BIR enjoy the presumption of correctness since these are filed under the penalty of perjury, unless proven fraudulent, incorrect, or false. This is consistent with the ruling of the Supreme Court in the case of ***SMI-ED Philippines Technology, Inc. v. Commissioner of Internal Revenue***,[7] to wit:

> "xxx The BIR is not mandated to make an assessment relative to every return filed with it. **Tax returns filed with the BIR enjoy the presumption that these are in accordance with the law. Tax returns are also presumed correct since these are filed under the penalty of perjury.** Generally, however, the BIR assesses taxes when it appears, after a return had been filed, that the taxes paid were incorrect, false, or fraudulent. The BIR also assesses taxes when taxes are due but no return is filed. xxx"[8]

Hence, absent any proof that respondent's VAT returns are fraudulent, incorrect or false, the same are presumed correct which can be relied upon by this Court.

Third, even assuming this Court does not consider respondent's VAT returns, the ICPA had already verified respondent's various documents, testified that its input VAT remained unutilized, and affirmed that the same was not applied to the latter's output VAT.

All told, the Court *En Banc* sees no justifiable reason to overturn the assailed Decision.

WHEREFORE, premises considered, the Motion for Reconsideration (Re: Decision promulgated 21 July 2020) filed by the petitioner is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[6] CTA *EB* Case No. 1791, 14 May 2019.
[7] G.R. No. 175410, 12 November 2014.
[8] Emphasis supplied.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice