REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PILIPINAS KYOHRITSU, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9706

Members:

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

Promulgated:

NOV 20 2020 1:45 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court are the following:

1. petitioner's **Motion for Reconsideration** filed on July 22, 2020, with respondent's **Opposition (Re: Motion for Reconsideration)**, posted on August 17, 202; and received by the Court on August 25, 2020; and,

2. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 30 June 2020)** filed on July 23, 2020, with petitioner's **Opposition (To Respondent's Motion for Partial Reconsideration dated 15 July 2020)**, filed on September 1, 2020.

On June 30, 2020, the Court promulgated a Decision partially granting petitioner's claim for refund of unutilized input value-added tax (VAT), the dispositive portion of which reads as follows:

"**WHEREFORE**, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to refund or issue tax credit certificate in favor of petitioner the amount of **₱23,534.47**, representing the latter's unutilized input VAT attributable to its zero-rated sales for the period April to June 2015 (1st quarter) and July to September 2015 (2nd quarter) of FY ending March 31, 2016.

SO ORDERED."

In their respective Motions, both parties pray that the above Decision be reconsidered and set aside.

Petitioner's Motion for Reconsideration

Petitioner raises the following grounds in support of its Motion, to wit:

I. Petitioner complied with the third requisite of Revenue Regulations (RR) No. 16-2005 and Section 106(A)(2)(A)(1) and offsetting is categorically and clearly allowed by law; and,

II. Petitioner substantially complied with all the invoicing and substantiation requirements under Section 113 and 237 of the National Internal Revenue Code (NIRC) of 1997, as amended.

As to the first ground, petitioner claims that the Court misappreciated the facts of the case when it ruled that petitioner did not qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, as amended, since it failed to reconcile the amount of remittances and the actual export sales of goods in the amount of ₱3,743,326,205.87. Petitioner points out that in his Report, the court-commissioned Independent Certified Public Accountant (ICPA), Mr. Garry Pagaspas, explains that the reason for the discrepancy was due to the offsetting arrangement between petitioner and its client in the amount of US$17,488,525.70 within the first and second quarters of fiscal year (FY) ending March, 2016. Petitioner continues that for export sales to qualify as zero-rated under Section 106(A)(2)(a)(1) of the NIRC of 1997, as amended, the sale must either be paid in acceptable foreign currency *or its equivalent in goods or services*. In other words, petitioner asserts that the export sales could be paid either by way of inward remittance and/or in kind.

Petitioner avers that in the present case, it exported and sold goods to its clients (SWS-Japan and SEWS-USA), and in return, bought and imported goods from them; thus, an offsetting was made. Petitioner explains that to limit the options of its clients to only remitting and paying in cash or in foreign currency the goods they bought from petitioner – when they could properly offset the same – would not only be impractical but also run counters with the common business practices in international trade. Hence, considering that that this type arrangement is allowed under the NIRC, such would not disqualify petitioner from availing VAT refund.

As to the other ground, petitioner claims that the Court erred when it ruled that the invoices and receipts submitted by petitioner were insufficient based on the invoicing and substantiation requirements Sections 113 and 237 of the NIRC of 1997, as amended, in relation to Section 4 of RR No. 16-2005. Petitioner argues that there is nothing in the said provisions which indicates that if there is handwritten detail/information in the receipts/invoices, the same would not be considered in compliance with the requirements. Thus, petitioner maintains that it substantially complied with all the invoicing and substantiation requirements.

On the other hand, in his comment, respondent opposes petitioner's motion claiming that it is incumbent upon petitioner to prove its entitlement to the refund sought. In the present case, respondent imputes that petitioner manifestly failed to discharge the said burden.

<u>Respondent's Motion for Partial Reconsideration</u>

In his Motion, respondent assails the Decision arguing that the Court erred in ruling that petitioner was entitled to refund in the reduced amount of ₱23,534.47, representing unutilized input VAT allegedly attributable to zero-rated sales. According to respondent, the law requires that only those "creditable input taxes" that are "directly attributable" may be refunded. As such, respondent claims that for an input tax to be creditable, it must came 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. However, respondent claims that petitioner failed to establish that the input tax on purchases was attributable to its zero-rated sales.

Nonetheless, respondent asserts that the law does not state that all input taxes of a VAT-registered person whose sales are zero-rated are refundable. Purportedly, purchases by the business such as for personal activities, business entertainment, corporate events outside office meetings, cannot be claimed as an attributable and creditable input tax.

On the other hand, in its comment, petitioner opposes respondent's motion insisting that the same should have been denied outright for being patently *pro forma*, and for failing to specifically point the alleged errors of the Court's attribution of petitioner's input VAT to its zero-rated sales. In any case, petitioner claims that the law does not require attributability for VAT refund applications.

Accordingly, this Court finds both respondent's Motion for Partial Reconsideration and petitioner's Motion for Reconsideration bereft of merit.

At the onset, the arguments proffered by both parties in their respective Motions are mere rehash of the same facts and issues which have already been discussed extensively in the assailed Decision dated June 30, 2020. Nevertheless, the Court shall still address the issues raised by the parties.

In its Motion, petitioner asserts that the disallowed amount of discrepancy was brought about by the offsetting between petitioner and its clients. This was however reconciled by the ICPA in his Report when it found that petitioner exported and sold goods to its clients (SWS-Japan and SEWS-USA), and in return, petitioner bought and imported goods from them.

Again, the Court is not convinced.

To stress, there is nothing in the records of the case that would show the offsetting transactions between petitioner and its clients other than the bare allegations made by petitioner and the Report made by ICPA, without any other supporting documents evidencing the said offsetting transactions.

Basic is the rule that mere allegation is not evidence and is not equivalent to proof.[1] That whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.[2]

In the present case, the ICPA Report shows that only SWS-Japan had offsetting transactions with petitioner, to wit:[3]

> "N. We further noted from the Reconciliation that there were offsetting between PKI and its customer, Sumitomo Wiring Systems, Ltd. of USD17,488,525.7 within Q1 and Q2 FY March 2016 supported by Net-Off documents issued by SWS Japan and signed by representatives of PKI and SWS-Japan summarized as follows:"

Apparently, SEWS-USA had no offsetting transactions with petitioner. However, as discussed in the assailed Decision, petitioner failed to present any evidence to prove that SWS-Japan is a non-resident foreign corporation doing business outside the Philippines, *viz.*:[4]

> "Relative to the *first* essential element, petitioner presented the *Certification of Non-Registration of Company* dated April 5, 2018 issued by the Securities and Exchange Commission (SEC) to the effect that the records of the latter do not show the registration of SWS-JAPAN as either a corporation or a partnership. Such document, however, failed to prove that SWS-JAPAN, petitioner's client, is a non-resident foreign corporation doing business outside the Philippines.
>
> As consistently ruled by this Court in a number of cases, to be considered as a non-resident foreign corporation doing business outside the Philippines, such must be proven by presenting, for each corporation involved, at the very least, **both** SEC Certification of Non-Registration **and** proof of incorporation or registration,

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[1] *Florencio Morales, Jr. v. Ombudsman Conchita Carpio-Morales, et al.*, G.R. No. 208086, July 27, 2016; citing *Rodolfo M. Agdeppa v. Honorable Office of the Ombudsman, et al.*, G.R. No. 146376, April 23, 2014.

[2] *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistics Systems, Inc.*, G.R. No. 214406, February 6, 2017.

[3] Exhibit "P-32" (ICPA Report, p. 16).

[4] Decision, p. 21.

respondent claims that petitioner failed to establish that the input tax on purchases was attributable to its zero-rated sales.

Nonetheless, respondent asserts that the law does not state that all input taxes of a VAT-registered person whose sales are zero-rated are refundable. Purportedly, purchases by the business such as for personal activities, business entertainment, corporate events outside office meetings, cannot be claimed as an attributable and creditable input tax.

On the other hand, in its comment, petitioner opposes respondent's motion insisting that the same should have been denied outright for being patently *pro forma*, and for failing to specifically point the alleged errors of the Court's attribution of petitioner's input VAT to its zero-rated sales. In any case, petitioner claims that the law does not require attributability for VAT refund applications.

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At the onset, the arguments proffered by both parties in their respective Motions are mere rehash of the same facts and issues which have already been discussed extensively in the assailed Decision dated June 30, 2020. Nevertheless, the Court shall still address the issues raised by the parties.

In its Motion, petitioner asserts that the disallowed amount of discrepancy was brought about by the offsetting between petitioner and its clients. This was however reconciled by the ICPA in his Report when it found that petitioner exported and sold goods to its clients (SWS-Japan and SEWS-USA), and in return, petitioner bought and imported goods from them.

Again, the Court is not convinced.

To stress, there is nothing in the records of the case that would show the offsetting transactions between petitioner and its clients other than the bare allegations made by petitioner and the Report made by ICPA, without any other supporting documents evidencing the said offsetting transactions.

> and that there is no other indication which would disqualify said entity in being classified as a nonresident foreign corporation. Since the Court cannot ascertain from the Certification of Non-Registration alone whether SWS-JAPAN is a non-resident foreign corporation doing business outside the Philippines, petitioner failed to comply with the *first* essential element." *(Citations omitted)*

With emphasis, even if SWS-Japan has offsetting transactions with petitioner, the fact still remains that being the recipient of petitioner's services, it cannot be ascertain that it is a non-resident foreign corporation doing business outside the Philippines, which is required by law for VAT zero-rating.

With regard to petitioner's argument that there is nothing in the NIRC that states that handwritten details/information on receipts/invoices would make the said receipts/invoices not in compliance with the requirements, this Court agrees.

However, doubt as to the compliance with the substantiation of invoicing requirements arises due to the nature how the handwritten details/information was made in the receipts/invoices in the amount of ₱10,005,035.14. As held in the assailed Decision, to wit:[5]

Particulars	**Input VAT**	**ICPA Exhibit No./Reference**
1. Fully Compliant		
Domestic Purchase-services and noncapital goods	₱ 11,592,237.64	"P-49"
Importations-Non capital goods	972,103.00	"P-50"
Capital Goods-Domestic Imported Capital goods: Capital Goods not exceeding 1M -₱135,960.00 Capital Goods exceeding 1M -₱225,639.87[6]	361,599.86	"P-51"; Table 34 of ICPA Report (p. 26)
Subtotal	**₱12,925,940.50**	
2. Not Fully Compliant		
a. Documents printed in thermal paper	₱ 10,590.64	"P-41"
b. Handwritten TIN and/or address in loose-leaf or computerized accounting invoice/receipt	2,128,413.94	"P-42"
c. Mixed handwritten and printed details in documents not identified as either with loose-leaf or CAS permit	5,221,762.46	"P-43"
d. Different handwriting of details in documents with signature	2,466,856.12	"P-44"

[5] *Id.*, pp. 42 to 43.
[6] There is a discrepancy of ₱0.01 from the Summary of Allowable Input VAT from Capital Goods may be due to rounding off.

e. No original documents seen	250.84	"P-45"
f. Not prescribed supporting documents	594.00	"P-46"
g. Out of period	172,800.00	"P-48"
h. Undated	3,767.14	"P-48"
Subtotal	**₱10,005,035.14**	
Total Input VAT accounted by ICPA	**₱22,930,975.64**	

Again, handwritten details/information inserted in the receipts/invoices must only be made by authorized signatories. In the ICPA Report, handwritten TIN and/or address were inserted in loose-leaf or computerized accounting invoice/receipt. Considering that the invoice/receipt is already computerized, any subsequent insertion therein would raise a doubt as to the completeness of the said invoice/receipt, as well as to loose-leaf invoice/receipt. The same goes with invoice/receipt with mixed handwritten and printed details in documents not identified as either with loose-leaf or CAS permit, and different handwriting of details in documents with signature – only authorized signatories should insert details/information in the invoice/receipt.

Needless to say, while it is true that the determination of the probative value of the ICPA report is within the province of the Court, the ICPA still has the duty and obligation to certify to the correctness of the contents of the summary after making an examination, evaluation and audit of voluminous receipts, invoices or long accounts.[7] In the present case, the Court, after its careful and thorough verification, has adopted some of the findings of the ICPA, *i.e.*, the ruling on the substantiation of invoicing requirements.

As to respondent's argument that no attributability was established between petitioner's input tax on purchases vis-à-vis the zero-rated sales, this Court does not agree.

It must be emphasized that the law does not limit input taxes to purchases that only form part of the finished product of the taxpayer. Section 110(A)(3) of the NIRC of 1997, as amended, provides that the term "input tax" means the value-added tax due from or paid by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services. *gc*

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[7] Section 5(a)(2), Rule 12 of the Revised Rules of the Court of Tax Appeals.

Likewise, Section 112(A) of the NIRC of 1997, as amended, does not specifically require that the refundable creditable input tax should be "directly attributable" to such sales. It is clearly stated therein 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, 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:** x x x."

Clearly, the law merely requires that the creditable input VAT should be "attributable" to the zero-rated or effectively zero-rated sales. The foregoing provision does not specifically require that the refundable creditable input tax should be "directly attributable" to such sales. The law only mandates that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales. Further, the law allows allocation of input taxes in case the same cannot be directly or entirely attributed to any of the sales. In other words, input taxes that bear a direct or indirect connection with a taxpayer's zero-rated sales satisfy the requirement of the law. ℊℯ

Also, when Section 112(A) of the NIRC of 1997, as amended, speaks of "creditable input tax due or paid *attributable* to such sales," it is more logical to interpret this phrase as referring to instances of an apportionment of the input VAT in mixed transactions, i.e., taxpayer is engaged in both zero-rated or effectively zero-rated sales and in taxable or exempt sales, rather than on the classification of the purchase.

From the foregoing disquisition, the Court finds no cogent reason to reverse or modify the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration and respondent's Motion for Partial Reconsideration (Re: Decision promulgated 30 June 2020) are both **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice