REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MACQUARIE OFFSHORE SERVICES PTY. LTD.-PHILIPPINE BRANCH *Petitioner,*	CTA Case No. 9180 Members:
-versus-	**DEL ROSARIO,** P.J.,*Chairperson,* **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 03 2019 2:00pm

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution of this Court is respondent Commissioner of Internal Revenue's (CIR) Motion for Partial Reconsideration seeking for the reversal of the Decision[1] promulgated on November 6, 2018, the dispositive portion of which reads as follows:

Decision dated November 6, 2018:

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent CIR is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in the amount of **FIFTY-ONE MILLION FIVE HUNDRED THIRTY-SIX THOUSAND TWO HUNDRED SEVENTY-FOUR AND 92/100 PESOS (P51,536,274.92)**, representing petitioner's unutilized input VAT attributable to its zero-rated sales for FY ended March 31, 2014.

[1] Division Docket, pp.1807-1862.

SO ORDERED.

In the instant Motion, the CIR insists that the Court erred in partially granting petitioner's claim for refund considering that petitioner fell short in satisfying the requirements mandated by law to support its claim, and for being hearsay as well.

At the outset, this Court stresses the fact that in resolving issues of whether or not the taxpayer is entitled to a claim for refund, the Court is guided by the dictum of the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[2], when it laid down the stringent standards to be observed in making a conclusion on a judicial claim for refund, to wit:

> "In fine, we reiterate our consistent ruling that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer***, but also the pieces of evidence presented entitling a taxpayer to an exemption is (sic) strictissimi scrutinized and must be duly proven.***" (emphasis supplied)

Under this premise, the Motion for Partial Reconsideration must fail. We do not find the reasons raised by the CIR meritorious enough to warrant the attention of the members of this Court, as they are merely reiterations of the arguments raised before this Court.

In the assailed decision, petitioner has successfully discharged its burden of proving its entitlement to the refund in the amount of P51,536,274.92, representing its unutilized input VAT attributable to its zero-rated sales for FY ended March 31, 2014. To support its claim, it presented before the Court summaries of its zero-rated sales, service invoices, ORs, schedule of remittances and certifications of inward remittances issued by Hong Kong Shanghai Bank Corporation (HSBC).

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[2] G.R. No. 159490, February 18, 2008.

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Moreover, a careful reading of the assailed Decision would clearly reveal that the Court had already disallowed portions of the input VAT claimed for failure to meet the substantiation requirements provided by relevant laws and implementing regulations resulting to a reduction in the amount claimed by petitioner.

To bolster its arguments, the CIR argues that the documentary evidence supporting petitioner's claim for refund should not be given probative value for being hearsay. The Court notes that this is the first time, through the instant Motion, that the admissibility of the questioned documents is being assailed.

Let the CIR be reminded that basic is the rule that evidence not objected to may be deemed admitted and may be validly considered by the court in arriving at its judgment. This is true even if by its nature, the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.[3] Stated differently, once evidence is admitted without objection, even though not admissible under an objection, any further attempt to question its admissibility should accordingly be disregarded.[4]

Significantly, respondent's objection was registered way beyond the period provided under the rules. Section 36, Rule 132 of the Rules of Court states, among others, that in cases of a written formal offer of evidence, a party must interpose his objections, if any, within three (3) days after notice of the offer unless the Court prescribes a different period. A party's right to impugn the admissibility of evidence is a mere privilege which can be waived. Necessarily, the objection must be made at the earliest opportunity, lest silence when there is opportunity to speak may operate as a waiver of objections.[5]

Applying the foregoing, the CIR failed to comply with afore-mentioned rule, thus, making all documentary evidence part of this case, and all parties are considered amenable to any favorable or unfavorable effects resulting from the said evidence.[6]

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[3] Heirs of Doronio vs. Heirs of Doronio, G.R. No. 169454, December 27, 2007.
[4] Interpacific Transit, Inc. vs. Aviles, G.R. No. 86062, June 6, 1990.
[5] Catuira vs. Court of Appeals, G.R. No. 105813, September 12, 1994.
[6] Quebral vs. Court of Appeals, G.R. No. 101941, January 25, 1996.

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Consequently, the said documents should be deemed sufficient for purposes of proving petitioner's zero-rated sales for all quarters of FY ended in March 31, 2014.

In sum, the Court had already ruled, upon a thorough examination of relevant supporting documents, that petitioner was able to prove its entitlement to the refund claimed, albeit in a reduced amount.

In view of the foregoing, this Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, the CIR's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice