REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

SONY MOBILE COMMUNICATIONS INTERNATIONAL AB (formerly known as SONY ERICSSON MOBILE COMMUNICATIONS INTERNATIONAL AB), *Petitioner,*	**CTA CASE NO. 8874**
	Members:
	BAUTISTA, *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated:
	JAN 26 2018 9:33 a.m.

x- -x

RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is respondent's **Motion for Reconsideration**, filed on September 8, 2017, with petitioner's **Comment (To Respondent's Motion for Reconsideration dated September 7, 2017)**, filed on October 12, 2017.

Respondent prays for a reconsideration of the Court's Decision dated August 18, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, Respondent is **ORDERED TO REFUND** in favor of Petitioner the amount of ₱1,633,869.88, representing Petitioner's unutilized input taxes attributable to zero-rated sales for calendar year 2012.
>
> **SO ORDERED**."

In assailing the aforesaid Decision, respondent anchors his arguments on the following grounds:

I. The input taxes claimed were carried over to the succeeding quarter or quarters in petitioner's value-added tax (VAT) returns; and

II. Petitioner is not entitled to refund of alleged unutilized input VAT for the 1st to 4th quarters of calendar year 2012 in the reduced amount of ₱1,633,869.88.

According to respondent, Revenue Officer Mayrose M. Vega has stated in a Memorandum Report that she found an excess input tax for 2012 that was carried over to the succeeding year 2013 and the same was utilized as input tax for purchases of goods exceeding ₱1,000,000.00 for the 2nd and 3rd quarters of 2013. Respondent insists that claims for refund are construed *strictissimi juris* against the taxpayer and liberally in favor of the government.

Petitioner objects the motion for reconsideration on the ground that the assailed Decision was based on the pieces of documentary and testimonial evidence it presented, stating that although petitioner carried over the claimed input VAT in the succeeding quarterly VAT Returns, the said input VAT remained unutilized until it was deducted as VAT Refund or TCC claimed in its quarterly VAT Return for the 3rd quarter of taxable year (TY) 2013. Petitioner claims that respondent's witness, Ms. Mary Rose Vega relied on the original VAT returns extracted from the Returns Processing System (RPS) of the Bureau of Internal Revenue (BIR) and did not further inquire or verify whether there were amended returns.

A careful evaluation of respondent's arguments shows that the same are mere rehash of the same facts and issues which have already been passed upon extensively in the assailed Decision.

The Court's ruling in the assailed Decision is based on the evidence presented by petitioner, to wit:

> "Moreover, although the claimed input VAT was carried over by Petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as 'VAT Refund/TCC Claimed' in its Quarterly VAT Return for the third quarter of taxable year 2013. Consequently, the subject claim no longer formed part of the excess input VAT of ₱2,566,710.17 as of the end of the third quarter of 2013, which was carried over/applied to the succeeding fourth quarter of 2013."

The Supreme Court held in the case of *Republic vs. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation)*[1], that when taxpayer was able to establish *prima facie* its right to the refund by testimonial and object evidence, the BIR should have presented rebuttal evidence to shift the burden of evidence back to the taxpayer, *viz*:

> "We are likewise unmoved by the assertion of the petitioner that the respondent should have submitted the quarterly returns of the respondent to show that it did not carry-over the excess withholding tax to the succeeding quarter. **When the respondent was able to establish *prima facie* its right to the refund by testimonial and object evidence, the petitioner should have presented rebuttal evidence to shift the burden of evidence back to the respondent. Indeed, the petitioner ought to have its own copies of the respondent's quarterly returns on file, on the basis of which it could rebut the respondent's claim that it did not carry over its unutilized and excess creditable withholding taxes for the immediately succeeding quarters.** The BIR's failure to present such vital document during the trial in order to bolster the petitioner's contention against the respondent's claim for the tax refund was fatal." (*Emphasis supplied.*)

Applying the foregoing case to the instant case, the Court has considered petitioner's documentary and testimonial evidence, such as Exhibits "P-24", "P-25", "P-27", and "P-28", to arrive in the above-stated ruling that petitioner's input taxes were not applied to any output tax liability.

It is worthy to point out that respondent did not present any rebuttal evidence to shift the burden of evidence back to petitioner after the latter established its entitlement to a claim of refund.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

---

[1]G.R. No. 188016, January 14, 2015.