REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

NEW YORK BAY PHILIPPINES, INC., *Petitioner*,	**CTA Case No. 10628**
	Members:
-*versus*-	**MANAHAN**, *Chairperson*, **REYES-FAJARDO**, *and* **ANGELES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	Promulgated: DEC 27 2024 11:38 a.m.

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RESOLUTION

MANAHAN, *J.*:

For resolution of the Court are the following:

1. Respondent's *Motion for Partial Reconsideration (Re: Decision promulgated on 11 July 2024)*[1] filed on July 29, 2024 ("**respondent's *Motion***"), with petitioner's *Comment (Re: Motion for Partial Reconsideration dated July 29, 2024)*[2] filed on September 9, 2024; and

2. Petitioner's *Motion for Partial Reconsideration (Re: Decision dated July 11, 2024)*[3] filed on July 31, 2024 ("**petitioner's *Motion***"), with respondent's *Comment and Opposition (Re: Motion for Partial Reconsideration dated 31 July 2924)*[4] filed on September 13, 2024.

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[1] Docket – Vol II, pp. 912-926.
[2] Docket – Vol II, pp. 941-953.
[3] Docket – Vol II, pp. 927-935.
[4] Docket – Vol II, pp. 956-965.

Both *Motions* assail the Court's *Decision* dated July 11, 2024 ("**assailed *Decision***"), which partially granted petitioner's refund claim to the extent of Php2,156,043.74.

Respondent's Motion

Respondent presents the following arguments. First, in ruling that Php25,048,689.32 out of the substantiated input VAT of Php33,617,096.41 is attributable to petitioner's valid zero-rated sales, the Court failed to show direct attributability or a concrete connection between the purchases on which the VAT was paid and the zero-rated sales. Second, the Court erred in finding that the input VAT claimed was not carried over and utilized in the succeeding quarters of calendar years 2020 and 2021. Lastly, respondent insists that petitioner failed to substantiate its refund claim.

Petitioner's Motion

Petitioner specifically contests the Court's disallowance of the amount of Php7,155,551.43 on the ground that it pertains to sales which are unqualified for VAT zero-rating due to being supported by official receipts ("ORs") covered by an Authority to Print ("ATP") bearing a period of validity which is later than the transaction dates. According to petitioner, all that the law requires is that the ORs are duly-registered; hence, it is of no moment that the subject ORs were antedated so long as the ORs were printed pursuant to a validly-issued ATP.

We deny both *Motions* for lack of merit.

Input VAT may be allocated proportionately on the basis of the volume of sales

Section 112(A) of the Tax Code expressly provides:

> **SEC. 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, ... *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 of 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***...

Contrary to respondent's contention, the above-quoted provision clearly permits the proportionate allocation of input VAT to zero-rated sales, exempt sales, and taxable sales when the taxpayer is not engaged in purely zero-rated transactions. Here, since petitioner is engaged in mixed transactions and its input VAT cannot be directly and entirely attributable to any one of those transactions, the Court simply applied Section 112(A) and allocated the input VAT on the basis of petitioner's zero-rated sales and taxable sales.

Moreover, respondent's old theory of direct attributability is no longer in line with prevailing jurisprudence. As held in *Commissioner of Internal Revenue v. Cargill Philippines, Inc.*:[5]

> Evidently, contrary to petitioner's contention, **the law does not require direct attributability** of the input VAT from the purchase of goods to the finished product whose sale is zero-rated, in order for such input VAT to be refundable. *Ubi lex non distinguit nec nos distinguere debemos.* When the law has made no distinction, the courts ought not to recognize any distinction.
>
> Thence, it suffices that the purchase of goods, properties, or services upon which the input VAT is based, **can be attributed to the zero-rated sales.** This conclusion is further bolstered by Section 110(A)(l) of the Tax Code, which explicitly sets forth the sources of creditable input VAT: ...

[5] G.R. Nos. 255470-71, January 30, 2023 [Per J. Dimaampao, Third Division]. *Emphasis in the original.*

> Verily, the law does not limit itself to purchases 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.

Petitioner duly established that it did not carry over and utilize the amount claimed for refund in the succeeding quarters

Respondent argues that the Court cannot rule that the claimed input VAT for calendar year ("**CY**") 2019 remained unutilized based solely on the Amended Quarterly VAT Return for the 1st quarter of CY 2020. He insists that petitioner should have presented the VAT Returns for the succeeding quarters of CYs 2020 and 2021 to prove the same.

As found by the Court, however, the total amount of Php33,386,031.16 representing petitioner's input VAT claim was already deducted in its Amended Quarterly VAT Return for the 1st quarter of CY 2020 as "VAT Refund/TCC claimed." As such, the claim no longer forms part of the excess input VAT of Php8,578,719.60 as of the end of 1st quarter of CY 2020. Hence, for purposes of the present VAT refund claim, it is no longer necessary for petitioner to present its VAT Returns for the 2nd quarter of CY 2020 and onwards.

Failure to issue ORs covered by a valid ATP at the time of sale is a valid ground for the denial of the refund claim

The Court reiterates that claims for tax credit or refund must strictly comply with the invoicing and substantiation requirements under the Tax Code and pertinent rules and regulations.[6] Section 113 of the Tax Code requires:

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[6] *Team Energy Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 197663 and 197770, March 14, 2018 [Per J. Leonen, Third Division].

> **SEC. 113.** ***Invoicing and Accounting Requirements for VAT-Registered Persons.*** –
>
> (A) *Invoicing Requirements.* – A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods or properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.

The invoice or OR must be printed under a valid ATP. Section 238 of the Tax Code mandates:

> **SEC. 238.** ***Printing of Receipts or Sales or Commercial Invoices.*** –
>
> All persons who are engaged in business shall secure from the Bureau of Internal Revenue an authority to print receipts or sales or commercial invoices before a printer can print the same.

Here, petitioner presented ORs in support of its claim for refund of input VAT attributable to zero-rated sales. However, the ATP covering such ORs were issued after the date indicated in the ORs:

OR No.	OR Date	Zero-rated Sales	Remarks
13257	May 9, 2019	P 47,691,939.66	ATP issued on June 3, 2019
13258	May 10, 2019	58,544,719.53	
13259	May 30, 2019	50,471,812.17	
		P 156,708,471.36	

Petitioner now banks on the fact that the ORs themselves, albeit antedated, are covered by the ATP issued on June 3, 2019. According to petitioner, this is all that the law requires— that receipts and invoices be duly registered with the BIR and covered by the ATP.

The Court cannot subscribe to petitioner's view. Section 237 of the Tax Code instructs:

> **SEC. 237. *Issuance of Receipts or Sales or Commercial Invoices.*** –
>
> **(A) *Issuance.*** – All persons subject to an internal revenue tax shall, **at the point of each sale and transfer** of merchandise or for ser-vices rendered valued at One hundred pesos (P100.00) or more, **issue duly registered receipts or sales or commercial invoices**, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: ... *Provided, further,* That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The law clearly requires that the taxpayer issue a duly registered OR at the point of each sale. Thus, the ORs issued by petitioner for the transactions dated May 9, 2019; May 10, 2019; and May 30, 2019 must pertain to a valid and subsisting ATP which cover the said dates.

Petitioner's reliance on *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*[7] and *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*[8] is thus misplaced. Both cases simply held that the ATP need not be printed or indicated on the invoices or receipts. Here, the Court did not disqualify petitioner's sales for zero-rating because the ORs it presented do not bear the ATP. Rather, the Court disqualified the same because the ORs issued by petitioner, which are the subject matter of the instant claim for refund, are not "duly registered receipts" "at the point of each sale." Verily, this constitutes non-compliance with the invoicing and substantiation requirements under the law.

A claim for input VAT credit or refund is construed strictly against the taxpayer. Considering petitioner's failure to properly substantiate its zero-rated sales amounting to Php156,708,471.36, the Court affirms the disallowance of the

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[7] G.R. No. 166732, April 27, 2007 [Per J. Callejo, Sr., Third Division].
[8] G.R. No. 172378, January 17, 2011 [Per J. Del Castillo, First Division].

amount of Php7,155,551.43 representing input VAT allocated thereto.

ACCORDINGLY, the respondent's *Motion for Partial Reconsideration (Re: Decision promulgated on 11 July 2024)* and petitioner's *Motion for Partial Reconsideration (Re: Decision dated July 11, 2024)* are both **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

MARIAN IVY F. REYES-FAJARDO
Associate Justice

HENRY S. ANGELES
Associate Justice