REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MAXIMA MACHINERIES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2590
(CTA Case No. 9453)

Present:

DEL ROSARIO, *P.J.*,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

Promulgated:
MAY 02 2024
3:35 p.m.

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RESOLUTION

CUI-DAVID, J.:

For resolution of this Court are:

1. petitioner's ***Motion for Partial Reconsideration*** filed on July 28, 2023,[1] without respondent's comment;[2] and

2. respondent's ***Motion for Reconsideration (Re: Decision promulgated 18 July 2023)*** filed on August 8, 2023,[3] with petitioner's *Comment and Opposition (to the Motion for Reconsideration dated 25 July 2023)* filed on October 2, 2023.[4]

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[1] *EB* Docket, pp. 170-187.
[2] Records Verification dated November 8, 2023, *EB* Docket, unpaged.
[3] *EB* Docket, pp. 189-198.
[4] *Id.*, pp. 200-203.

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Both *Motions* seek the reconsideration of the *Decision* dated July 18, 2023 (assailed *Decision*). The dispositive portion of the assailed *Decision* follows:

> **WHEREFORE**, premises considered, the instant *Petition for Review* is **partially GRANTED**. The *Decision* dated June 30, 2021, and the *Resolution* dated March 16, 2022, of the Court's First Division in CTA Case No. 9453 are **REVERSED** and **SET ASIDE**.
>
> Accordingly, respondent is **ORDERED** to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **P4,704,983.38** representing the unutilized input VAT attributable to its valid zero-rated sales/receipts for the fourth quarter of FY 2014.
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> **SO ORDERED.**

Petitioner's Motion for Partial Reconsideration

In its *Motion for Partial Reconsideration*, petitioner maintains its argument that Marubeni Corporation is a non-resident foreign corporation (NRFC) doing business outside the Philippines. According to petitioner, the services rendered to Marubeni Corporation were clearly stated in the Independent Certified Public Accountants (ICPA) Report, and petitioner merely acted as an agent in the Philippines for the placing of the orders of the local customer to its non-resident foreign suppliers.[5] Citing the 1989 Supreme Court case of *Marubeni Corporation v. Commissioner of Internal Revenue*,[6] petitioner argues that Marubeni Corporation is an NRFC.

Anent the disallowance of its input tax carryover, petitioner argues that the presentation of its quarterly value-added tax (VAT) return for the 4th quarter of the fiscal year (FY) 2014 should have already been sufficient.[7] According to petitioner, a tax refund case is a civil case that only requires a preponderance of evidence.[8] Reiterating its argument in its *Petition for Review*, petitioner contends that the validity of the input VAT carryover from previous quarters is already the subject of regular investigation by the BIR examiners[9] and that VAT returns are presumed correct.[10] Finally, petitioner cites the case of *Chevron Holdings, Inc. v. Commissioner of Internal*

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[5] *Id.*, par. 5.
[6] G.R. No. 76573, September 14, 1989.
[7] *Motion for Partial Reconsideration*, par. 9.
[8] *Id.*, pars. 14-22.
[9] *Id.*, pars. 23-24.
[10] *Id.*, par. 25.

Revenue (Chevron)[11] in stating that the Court cannot examine the amount of input VAT carryover in determining petitioner's refundable amount.

Respondent's Motion for Reconsideration

Respondent argues that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded. Relying on the European VAT system, he argues that only the VAT paid for supplies in the business is creditable as input tax of a VAT-registered person. Thus, purchases must relate to the supplies, *i.e.,* goods/services.

Respondent adds that to be creditable, the input tax must come from purchases of goods that form part of the taxpayer's finished product or be directly used in the production chain. Further, there must be a showing of the direct attributability of the purchases or input tax to the finished product whose sale is zero-rated.

Having failed to establish direct attributability between the input tax on purchases vis-à-vis its zero-rated sales, respondent insists that petitioner fell short of proving the veracity of its claim for refund.

Respondent also cites the oft-repeated principle that refund claims are regarded as in derogation of sovereign authority and are to be strictly construed against the claimant and liberally in favor of the taxing authority.

We resolve.

At the onset, We note that petitioner's arguments in its *Motion for Partial Reconsideration* are mere reiterations of the arguments raised in its *Petition for Review* which have been thoroughly considered, resolved, and passed upon by this Court in the Assailed Decision.

It is well-settled that "reiterated arguments in a motion for reconsideration do not need a new judicial determination."[12] Therefore, there is no necessity to discuss and rule again on these grounds since this would be a useless formality of ritual

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[11] G.R. No. 215159, July 5, 2022.
[12] *People v. Agacer*, G.R. No. 177751 (Resolution), January 7, 2013 citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005; *Madeleine Mendoza-Ong v. Hon. Sandiganbayan, et al.*, G.R. Nos. 146368-69 (Resolution), October 18, 2004.

invariably involving merely a reiteration of the reasons for rejecting the arguments advanced by the movant already set forth in the judgment.[13]

In *Shangri-La International Hotel Management v. Developers Group of Companies, Inc.*,[14] the Supreme Court ruled that it is incumbent upon the movant to convince the Court that certain findings or conclusions are contrary to law, to wit:

> "The bulk of the aforementioned grounds is a mere rehash of movant's previous arguments. While DGCI is correct in stating that a motion for reconsideration, by its very nature, may tend to dwell on issues already resolved in the decision sought to be reconsidered and that this should not be an obstacle for a reconsideration, the hard reality is that movant has failed to raise matters substantially plausible or compellingly persuasive to warrant the desired course of action.
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> Considering that the grounds presently raised have been sufficiently considered, if not squarely addressed, in the subject Decision, it behooves movant to convince the Court that certain findings or conclusions in the Decision are contrary to law. As it is, however, the instant motion does not raise any new or substantial legitimate ground or reason to justify the reconsideration sought."

Accordingly, We affirm our *Decision* and rule that:

1. Petitioner failed to sufficiently prove that Marubeni Corporation is an NRFC for its failure to present Marubeni Corporation's Securities and Exchange Commission (SEC) Certificate of Non-Registration. Resultingly, its sales to Marubeni Corporation cannot qualify for zero-rating under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended.[15] Relatedly, the Court can make its own examination independent of the examination

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[13] *People v. Agacer*, G.R. No. 177751 (Resolution), January 7, 2013 citing *People v. Larrañaga*, G.R. Nos. 138874-75, July 21, 2005 and *Ortigas Land Co. Ltd. Partnership v. Judge Velasco*, G.R. No. 109645 (Resolution), March 4, 1996.
[14] *Shangri-la International Hotel Management, Ltd. v. Developers Group of Companies, Inc.*, G.R. No. 159938 (Resolution), January 22, 2007.
[15] SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties ...
(B) Transactions Subject to Zero Percent (0%) Rate - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate. ...
(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

done by the ICPA, pursuant to Rule 13, Section 3 of the Revised Rules of the Court of Tax Appeals (RRCTA).[16]

2. The *Chevron* case is not in all fours in this case, as this Court takes judicial notice of petitioner's cases before this Court or its Divisions[17] where its input VAT claims were examined and subsequently disallowed.

Anent respondent's arguments in his *Motion for Reconsideration*, it has been settled that direct and entire attributability of the input taxes to zero-rated or effectively zero-rated sales is not required in claims for tax refund and issuance of tax credit certificate. We quote the Supreme Court in its recent disquisition in *Commissioner of Internal Revenue v. Toledo Power Co.*,[18] *viz.*:

> Contrary to petitioner's allegation, the Tax Code does not require direct and entire attribution of input taxes to the zero-rated or effectively zero-rated sales before it may be made subject of a tax refund or claim for tax credit certificate. In fact, the law only mentions the phrase "directly and entirely" in reference to mixed transactions or in cases where the taxpayer is engaged in both zero-rated or effectively zero-rated sales and VAT-taxable or VAT-exempt sales — such that input taxes which cannot be directly and entirely attributed to specific transactions shall be allocated based on the sales volume of each transaction.
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> The word attribute means to explain something by indicating a cause. Thus, when the law 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 incurred on a purchase or importation which causes or relates to the zero-rated or effectively zero-rated sales but not necessarily a part of the finished goods subject of such sales.
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> Based on this parameter, the input taxes of taxpayers engaged purely in either zero-rated or effectively zero-rated transactions are presumably attributable to the zero-rated or effectively zero-rated activity as they are not engaged in any other category for VAT purposes. All its purchases of goods and services are made in relation to or caused by its zero-rated or effectively zero-rated activities. Otherwise, how else would the

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[16] SECTION 3. Findings of Independent CPA. — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.

[17] *Maxima Machineries, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9358, March 11, 2019; *Maxima Machineries, Inc. v. Commissioner of Internal Revenue*, June 1, 2020, CTA Case No. 9268; *Maxima Machineries, Inc. v. Commissioner of Internal Revenue*, CTA *EB* Case No. 2054 (CTA Case No. 9210), February 11, 2020.

[18] G.R. Nos. 255324 & 255353, April 12, 2023.

taxpayer utilize its purchase but for its main activity which, incidentally in this case, is a zero-rated or effectively zero-rated transaction? The remaining requirement for it to claim refund or tax credit certificate for unutilized input tax are the documentary requirements and the period within which the same must be filed.

Meanwhile, taxpayers engaged in mixed transactions must first categorize its input taxes. Those which can be directly and entirely attributed to VAT-taxable transactions, VAT-exempt transaction, zero-rated transactions, and effectively zero-rated transactions shall first be applied to the respective output tax resulting from such transaction. Thereafter, residual input taxes, or input tax which "cannot be directly and entirely attributed to any one of the transactions, [x x x] shall be allocated to any one of the transactions [x x x] proportionately on the basis of the volume of sales." Simply stated, even if the input VAT cannot be directly and entirely allocated in any of these transactions, the taxpayer may still apply the input VAT proportionately based on the volume of the transactions. This is so because requirement of direct and entire attributability only applies in mixed transactions and only to the extent that input taxes can be attributed as a particular transaction.

This interpretation is further bolstered when juxtaposed with the definition of creditable input taxes under Section 110 of the Tax Code and the effective revenue regulations at the time.

... ...

Contrary to petitioner's submission, creditable input taxes go beyond taxes on purchases of goods that form part of the finished product of the taxpayer or those which are directly used in the chain of production. The Tax Code did not limit creditable input taxes to those incurred on purchases which ultimately find its way to taxpayer's finished products for sale. Input taxes incurred on other purchases may still be credited against output tax liability. Despite not forming part of the finished goods, Section 110 treats as creditable those input tax due from or paid in the course of their trade or business on the importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person. Surely, even if the purchased goods do not find their way into the taxpayer's finished product, the input tax incurred therefrom can still be credited against the output tax if it is (1) incurred or paid in the course of the VAT registered taxpayer's trade or business, and (2) supported by a VAT invoice issued in accordance with the invoicing requirements of the law.

Both parties fail to convince the Court to reconsider its *Decision*. Accordingly, the Court affirms and sees no need to revisit its discussion regarding petitioner's entitlement to a partial refund of its input VAT attributable to zero-rated sales.

WHEREFORE, premises considered, petitioner's *Motion for Partial Reconsideration* and respondent's *Motion for Reconsideration (Re: Decision promulgated 18 July 2023)* are hereby **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA G. MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice