REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TETRA PAK PHILIPPINES, INC., *Petitioner,*	**CTA Case No. 10113**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, and **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 23 2023 1:40 PM

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AMENDED DECISION

REYES-FAJARDO, J.:

For the Court's resolution is petitioner's Motion for Partial Reconsideration (Re: Decision dated 23 November 2022) dated December 27, 2022,[1] praying for a reconsideration of the Court's Decision dated November 23, 2022 (the "assailed Decision") denying petitioner's claim for refund or issuance of a tax credit certificate (TCC) in the amount of ₱25,188,945.26, representing its excess and/or unutilized input value-added tax (VAT) attributable to its zero-rated sales for the first (1st) quarter of calendar year (CY) 2017.[2]

In the assailed Decision, the Court denied petitioner's claim for refund for its failure to prove, to the satisfaction of the Court, its entitlement to the grant of tax refund or issuance of TCC. The dispositive portion reads:

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1 Motion for Partial Reconsideration, Docket - Vol. III, pp. 1293 to 1309.
2 Decision, Docket - Vol. III, p. 1290.

> " **WHEREFORE,** in light of the foregoing considerations, the present Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

In its Motion for Partial Reconsideration, petitioner raised that the Court erred in:

1. Disallowing petitioner's claimed input VAT on importations amounting to ₱6,402,360.00;[3]

2. Holding that petitioner's sales to Axelum Resources Corporation, a Board of Investment ("BOI")-registered entity, do not qualify as zero-rated sales for failure to provide proof of at least 70% export sales for the entire previous calendar year;[4]

3. Disallowing petitioner's "considered export sales" to BOI-registered and Philippine Economic Zone Authority ("PEZA")-registered entities in the amount of ₱101,816,181.28 for failure to comply with the invoicing requirements under the Tax Code and Revenue Regulations No. 16-05;[5]

4. Disallowing petitioner's input taxes in the amount of ₱2,858,088.39 for failure to indicate in the official receipt the nature of the services rendered as required under Section 113(B)(3) of the Tax Code;[6] and

5. Ruling that petitioner did not have sufficient input VAT to cover its output VAT liability.[7]

On January 12, 2023, the Court promulgated a Resolution directing respondent to file a comment/opposition to petitioner's Motion for Partial Reconsideration (Re: Decision dated 23 November 2022), within five (5) days from receipt of the said Resolution.

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3 Motion for Partial Reconsideration, Docket - Vol. III, p. 2.
4 *Id.* at p. 6.
5 *Id.* at p. 7.
6 *Id.* at p. 9.
7 *Id.* at p. 10.

However, respondent failed to file a comment/opposition. Thus, on February 21, 2023, petitioner's Motion for Partial Reconsideration (Re: Decision dated 23 November 2022) was submitted for the Court's resolution without respondent's comment.

The Motion for Partial Reconsideration is partly meritorious.

After a careful review of the records of this case and in light with recent jurisprudence, the Court finds that a refundable amount of petitioner's unutilized input VAT for the 1st quarter of CY 2017 is in order.

At the onset, the issues presented by petitioner in item nos. 1 to 4 above have already been passed upon, thoroughly explained, and discussed at length by the Court. As such, the same need no longer be discussed. The Supreme Court explained this principle in *Social Justice Society (SJS) Officers, et al. v. Lim,* to wit:[8]

> The grounds relied on being mere reiterations of the issues already passed upon by the Court, there is no need to "cut and paste" pertinent portions of the Decision or re-write the ponencia in accordance with the outline of the instant motion.
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> As succinctly put by then Chief Justice Andres R. Narvasa in Ortigas and Co. Ltd. Partnership v. Judge Velasco on the effect and disposition of a motion for reconsideration:
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> > The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal

[8] G.R Nos. 187836 & 187916, March 10,2015.

> ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc.

Nonetheless, considering that petitioner is engaged in mixed transactions—VAT-able, exempt, and zero-rated sales; and the input taxes cannot be directly and entirely attributable to any of these transactions—a re-computation of its refundable unutilized input VAT to conform with the recent pronouncement of the Supreme Court in *Chevron Holdings, Inc. (Formerly Caltex Asia Limited) v. Commissioner of Internal Revenue ("Chevron")*,[9] is proper.

Chevron ruled that when the taxpayer-claimant is engaged in mixed transactions, the refundable input VAT attributable to zero-rated sales is determined by getting the percentage of valid zero-rated sales over toral reported sales (taxable, zero-rated, and exempt) multiplied by the properly substantiated input taxes not directly attributable to any of the transactions.

Using the formula provided by *Chevron*, petitioner is entitled to the refund of its unutilized input VAT attributable to its zero-rated sales for the 1st quarter of CY 2017, amounting to **₱678,766.65**, computed as follows:

Valid zero-rated sales[10]	₱60,245,907.68
Divided by total reported sales[11]	839,932,262.84
Multiplied by valid input tax not directly attributable to any activity[12]	9,463,182.34
Refundable input tax attributable to zero-rated sales	**₱678,766.65**

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[9] G.R. No. 215159, July 5, 2022.

[10] As previously determined by the Court in its Decision dated November 23, 2022. *See* Decision, Docket - Vol. III, pp. 1267-1272.

[11] Decision, Docket - Vol. III, p. 1267.

[12] As previously determined by the Court in its Decision dated November 23, 2022. *See* Decision, Docket - Vol. III, p. 1287.

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Partial Reconsideration (Re: Decision dated 23 November 2022) is **PARTIALLY GRANTED**. Accordingly, the Decision dated November 23, 2022 is **AFFIRMED with MODIFICATIONS**. Consequently, the Commissioner of Internal Revenue is ordered to refund Tetra Pak Philippines, Inc. the total amount of **Six Hundred Seventy-Eight Thousand Seven Hundred Sixty-Six Pesos and 65/100 (₱678,766.65)**, representing unutilized input value-added tax attributable to zero-rated sales for the first quarter of calendar year 2017.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice