REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC
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TAGANITO MINING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1972
(CTA Case No. 9057)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

TAGANITO MINING CORPORATION,
Respondent.

CTA EB NO. 1975
(CTA Case No. 9057)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, JJ.

Promulgated:
JUN 1 6 2021 10:15 am

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RESOLUTION

UY, J.:

For resolution are the following:

1) Commissioner of Internal Revenue's "**MOTION FOR RECONSIDERATION (Re: Decision promulgated 3 September 2020)**" filed on September 22, 2020; and

2) Taganito Mining Corporation's "**MOTION FOR RECONSIDERATION (of the September 3, 2020 Decision)**" filed on October 7, 2020.

In both motions, no comment was filed thereto by opposing counsel, despite due notice thereof.[1] In said Motions, both parties pray that the Court *En Banc* set aside its Decision dated September 3, 2020, the dispositive portion of which reads:

> "**WHEREFORE,** in light of the foregoing considerations, both *Petitions for Review* are hereby **DENIED** for lack of merit. The Amended Decision dated July 27, 2018 and the Resolution dated November 20, 2018 rendered by the Second Division and Special Second Division of this Court, respectively, in CTA Case No. 9057 are hereby **AFFIRMED.**
>
> **SO ORDERED.**"

In support of his Motion, the Commissioner of Internal Revenue (CIR) raises the following arguments, to wit:

1. Input VAT must be attributable to the zero-rated sales, in that the connection between the purchases and finished product is concrete and not imaginary or remote.

2. A tax refund is in the nature of a tax exemption which must be construed *strictissimi juris* against the taxpayer. Thus, the taxpayer must present convincing evidence to substantiate a claim for refund.

In its Motion, Taganito Mining Corporation (TMC) argues that:

1. There was a failure to consider the input tax carried over from previous periods resulting to a double deduction of output VAT in the current period.

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[1] Records Verification dated January 20, 2021 and January 25, 2021, issued by Records Officer I Leocadia D. Victoria and Chief Judicial Staff Officer Benjamin D. Pineda, Jr. of the Judicial Records Division, stating that the parties failed to file their respective Comments on the Motions for Reconsideration.

2. It submitted uncontroverted documentary evidence showing the nature of the capital purchases coupled with testimonial evidence corroborating the nature and utilization of the capital goods. Its expenses are clearly attributable solely to its business of mining and selling ores.

3. The case of *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,*[2] is not applicable in this case.

THE COURT *EN BANC'S* RULING

Both Motions lacks merit.

After a careful examination and consideration of the parties' Motions for Reconsideration, it is noted that the main arguments raised in the said Motions are mere reiterations of matters which have already been considered, weighed and resolved in the assailed Decision. Thus, We shall not belabor, in this Resolution, to repeat the disquisitions made therein.

Nevertheless, this Court finds it necessary to reiterate that contrary to the CIR's contention, TMC has sufficiently established that the creditable input taxes are attributable to its zero-rated sales.

As discussed in the assailed Decision, Section 110 of the NIRC of 1997, as amended by R.A. No. 9337, does not limit itself to purchases or importation 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; but also includes, *inter alia*, purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed. Thus, the allegation that "*to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production*" is not entirely accurate.

To reiterate, for the input VAT on the purchase or importation of supplies to be creditable against the output VAT, it only needs to show that such supplies are for use in the course of business. As for the creditability of the input VAT on the purchase or importation of goods for which depreciation or amortization is allowed, otherwise

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[2] G.R. No. 190506, June 13, 2016.

known as *"capital goods,"* it is only required that the said purchase or importation is intended for use in trade or business.

As correctly found by the Court in Division, the input VAT on importations of capital goods, which are undeniably necessary for the production of TMC's exports, are attributable to its zero-rated sales. This was substantiated by the testimony of TMC's witness, Lennie A. Terre, who stated that the importation and domestic purchases of goods and services are essential to its export activities, to wit:

> "Q30: You mentioned a while ago that the input taxes of Taganito Mining Corporation came from domestic purchases of goods and services and from importation and local purchases of capital goods, can you tell us if there is any relationship between these purchases and petitioner's business of exploring, producing and exporting beneficiated nickel silicate ores and chromite ores?
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> A: On importation and local purchases of capital goods, the capital goods consist of capital equipment and other capital goods used by the company in exploring and producing the mined ores which are the mineral products being exported by the company.
>
> The same is true for our domestic purchases of goods and services because these goods are purchased and the services secured for the purpose of being used for our mining operations and without which we cannot produce mineral ores. Therefore, the input VAT that we pay on our capital goods and other purchases of goods and services are all essential and attributable to our company's export activities, more particularly because this is the sole business purpose and activity of our company."[3]

From the foregoing, it is clear that both the capital goods purchased and the imported goods of TMC are for use in the course of business or in its trade or business. Thus, the input VAT on the said purchases and importation are creditable against the output VAT of TMC, having fulfilled the requirements of Section 110 of the NIRC of 1997, as amended.

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[3] Exhibit "P-22."

Anent the alleged double deduction of output VAT from its creditable input tax, this Court reiterates its finding that in determining the amount refundable to TMC, the Court in Division already considered ***the total amount of TMC's input VAT***, as declared in the Quarterly VAT Returns, ***without*** any deduction for output VAT. Thereafter, in computing for the ***final*** amount of excess input VAT attributable to zero-rated sales, the Court in Division properly deducted the output VAT for TY 2013. Thus, there was no double deduction of output VAT from TMC's creditable input VAT.

With regard to TMC's contention that its expenses are clearly attributable solely to its business of mining and selling ores, this Court reiterates its finding that the substantiated input taxes cannot be entirely attributed to a specific type of sale, and must be allocated proportionately on the basis of the volume of sales, pursuant to Section 112 (A) of the NIRC of 1997, as amended.

According to Section 112 (A) of the NIRC of 1997, as amended, when the amount of creditable input tax due or paid cannot be directly and entirely attributed to zero-rated, taxable or exempt transactions, it *shall* be allocated proportionately on the basis of the volume of sales. Thus, this Court agrees with the findings of the Court in Division, which ruled that "*even though TMC was able to prove that the capital goods purchased, from where the input taxes arose and claimed for refund, were used in generating its zero-rated sales of ores, it still failed to prove that the same were not used in generating its exempt sales. Consequently, the substantiated input taxes cannot be entirely attributed to any of its type of sales and were properly allocated proportionately on the basis of the volume of sales, pursuant to the foregoing Section 112(A) of the NIRC of 1997, as amended.*"

Finally, this Court finds no reversible error in the application of the *Coral Bay*[4] ruling, which held that in cases where no input VAT should have been paid, but the taxpayer still paid the same, its recourse should have been to seek reimbursement from its supplier/s. In the said case, there was no distinction or categorical statement, which would limit the application of the aforesaid doctrine only to a VAT exempt PEZA registered entity. When there is no such distinction, there is no valid reason to bar the application of the doctrine espoused in the subject case.

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[4] *Supra.*

In the instant case, the Court in Division did *not* rule that TMC is not entitled to zero-rated VAT on its local purchases. On the contrary, the Court in Division recognized that TMC's purchases were zero-rated VAT and it should not have paid input taxes on its local purchases. However, the fact that no VAT should have been passed on to TMC by its suppliers, does not authorize the refund or credit of such input VAT in favor of TMC. As earlier mentioned, in paying for input VAT when none should have been paid, TMC should seek reimbursement from its suppliers, and not from the government. Hence, TMC's input tax related to its local purchases are not allowable as input tax credit.

WHEREFORE, in light of the foregoing considerations, the **MOTION FOR RECONSIDERATION (Re: Decision promulgated 3 September 2020)"** filed by the Commissioner of Internal Revenue, as well as the "**MOTION FOR RECONSIDERATION (of the September 3, 2020 Decision)"** filed by Taganito Mining Corporation, are hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I maintain my Dissenting Opinion dated September 3, 2020)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice