**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## THIRD DIVISION

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| **BJ WELL SERVICES COMPANY (PHILIPPINES), INC.**<br>Petitioner, | **CTA CASE NO. 8859**<br>Members: |
| - versus - | **BAUTISTA,** *Chairperson,*<br>**FABON-VICTORINO,** *and*<br>**RINGPIS-LIBAN,** *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,**<br>Respondent. | Promulgated:<br>JUN 05 2017<br>3:23 p.m. |

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# RESOLUTION

**RINGPIS-LIBAN, *J.*:**

Petitioner's **Compliance** to the Court's Resolution dated March 24, 2017, filed on April 18, 2017, stating that it furnished a copy of its Motion for Reconsideration to respondent through personal delivery on April 17, 2017 as evidenced by the attached Motion for Reconsideration with stamp "Received" by respondent's office dated April 17, 2017 and Affidavit of Service executed by the paralegal of petitioner's counsel, is **NOTED**.

Considering the foregoing, the Court shall proceed to resolve petitioner's **Motion for Reconsideration**, filed on February 28, 2017, with respondent's **Opposition (Petitioner's Motion for Reconsideration)**, filed on April 11, 2017.

Petitioner seeks reconsideration of the Court's Decision[1] dated February 8, 2017 (assailed Decision), the dispositive portion of which reads:

[1] Docket, pp. 498-530.

**WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

**SO ORDERED.**[2]

Petitioner's motion is based on the following grounds:

a. The Court of Tax Appeals Third Division erred when it strictly applied the rule on substantiation requirements despite the fact that petitioner substantially complied with the invoicing requirements; and

b. The Court of Tax Appeals Third Division erred when it disregarded the input value-added tax (VAT) carry-over of petitioner in the amount of ₱3,985,253.12.

Petitioner avers that in the assailed Decision, the Court disallowed its claim for refund of unutilized input VAT for non-compliance with the substantiation requirements. The Court found that some of the official receipts and invoices submitted by petitioner failed to state either petitioner's TIN, address, VAT amount, date or a combination thereof.

Petitioner believes that the Court failed to appreciate that there is substantial compliance on its part. Granted that there are missing information in some of the invoices and official receipts, the same should not have been summarily disregarded based on strict application of the invoicing rules. A stringent adherence to the invoicing requirements under Revenue Regulations No. 16-2005 cannot prevail over a taxpayer's substantive right to claim a refund or tax credit for input taxes attributable to its zero-rated transactions. Following the ruling of the Supreme Court highlighting the importance of adherence to the spirit of the law rather than the letter of the law and taking into consideration petitioner's substantial compliance of the documentary requirements, there is sufficient reason to look behind the letter of the law and apply instead the spirit of Republic Act No. 9513 or the Renewable Energy Act of 2008.

Petitioner also argues that the input tax carry-over in the amount of ₱3,985,253.12 stated in its Quarterly VAT Return for the

[2] Docket, p. 529.

second quarter of 2012 should not have been disallowed in the instant case. It should be noted that the instant case pertains to a claim for refund of unutilized excess input VAT grounded on Section 112 of the National Internal Revenue Code (NIRC) of 1997, as amended, and not a VAT deficiency assessment, which are two different claims and require different procedural due process.

Petitioner stresses that under Section 112 of the NIRC of 1997, as amended, petitioner is required to substantiate only the input VAT that it is claiming for refund. There is no provision in Section 112 of the NIRC of 1997, as amended, that requires the taxpayer to prove and substantiate in refund case its input VAT carry-over. To require petitioner to prove its input tax carry-over is to impose a requirement not provided by laws and jurisprudence.

In his opposition, respondent contends that the Court correctly disallowed petitioner's claim for refund for its failure to comply with the substantiation requirements provided by law which must be applied strictly. Well-established is the rule that tax refunds/tax credits are construed strictly against the taxpayer.

As to the denial of petitioner's alleged input tax carry-over, respondent asserts that the Court correctly denied the same considering that there is no excess input VAT which may be subject of a claim for refund or tax credit.

The Court finds no merit in the instant motion.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[3] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[4] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[5] Hence, an applicant for a claim for tax refund or tax credit must not only prove

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[3] *Citibank, N.A. vs. Court of Appeals, et al.,* G.R. No. 107434, October 10, 1997.

[4] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.,* G.R. No. 127105, June 25, 1999.

[5] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011.

entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[6]

In *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*[7], the Supreme Court held that the taxpayer claiming a VAT input tax credit or refund has the burden of proving that he is entitled to the refund or credit by submitting evidence that he has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded. The invoicing requirements for a VAT-registered taxpayer as provided in the NIRC and revenue regulations are clear. A VAT-registered taxpayer is required to comply with all the VAT invoicing requirements to be able to file for a claim for input taxes on domestic purchases for goods or services attributable to zero-related sales.

Based on the foregoing, petitioner is required to comply with all the VAT invoicing requirements to be able to claim for input VAT refund attributable to its zero-rated sales. Hence, the Court correctly disallowed input taxes that failed to comply with the invoicing requirements.

With respect to the disallowance of the input VAT carry-over in the amount of ₱3,985,253.12, the Court reiterates its finding in the assailed Decision that the same cannot be validly applied against petitioner's output tax because petitioner failed to present VAT invoices or receipts to prove the existence of such amount.

Pursuant to Section 110 (A) (1) and (B) of the NIRC of 1997, as amended, any input tax shall be creditable against the output tax only if the same is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended.

In claiming excess/unutilized input tax from zero-rated transactions, it is the excess over the output taxes which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has

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[6] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[7] G.R. No. 180173, April 6, 2011.

enough prior year's excess input tax credits to cover its output tax liability for the current taxable year.[8]

Considering that petitioner failed to present its VAT invoices or official receipts to prove the existence of the "Input Tax Carried Over from Previous Period" in the amount of the amount of ₱3,985,253.12, said amount cannot be validly applied against petitioner's output tax.

Although it is true that the Court of Tax Appeals is not strictly governed by technical rules of evidence, the invoicing and substantiation requirements must, nevertheless, be followed because it is the only way to determine the veracity of petitioner's claims.[9]

In view of the foregoing, the Court finds no compelling reason to reverse or modify the assailed Decision.

**WHEREFORE**, premises considered, petitioner'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

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[8] *Chevron Holdings, Inc. [formerly Caltex (Asia) Limited] vs. Commissioner of Internal Revenue*, CTA EB No. 1146, April 14, 2015.

[9] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 181858, November 24, 2010.