REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

PENN PHILIPPINES, INC.,
Respondent.

CTA EB NO. 2512
(CTA CASE NO. 7457)

Present:

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

Promulgated:
JUN 11 2024 11:no am

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RESOLUTION

RINGPIS-LIBAN, *J.:*

For resolution is petitioner's *Motion for Reconsideration*, which was filed by registered mail on February 20, 2024, without a comment from respondent despite notice. The motion seeks to reverse the January 31, 2024 *Decision*, which denied the *Petition for Review* for lack of merit and affirmed the assailed decision and resolution of the court *a quo.*

The *Ad Cautelam Manifestation (Re: Notice dated 4 March 2024)* posted on March 8, 2024, which reiterated the manifestation that Ma. Elizabeth E. Peralta-Loriega is *not* connected with respondent in any way whatsoever and, thus, will not file any comment on petitioner's *Motion for Reconsideration*, is **NOTED**.

In the *Motion for Reconsideration*, petitioner repeats the argument that respondent's unsupported zero-rated sales in the amount of PhP16,640,256.91

should be subject to 12% output Value-Added Tax (VAT). This matter was already resolved at length by the Court in its decision, thus:

> "The CIR contends that these unsupported zero-rated sales of PhP16,640,256 should be subject to 12% output VAT.
>
> The CIR's position is untenable as it finds no basis in law.
>
> *First*, as already discussed, the sales of PhP16,640,256 are zero-rated by virtue of the explicit provision in Section 106(A)(2)(a)(5) of the NIRC, as amended, and as interpreted in RMC 74-99 and RR 16-2005 as amended by RR 4-2007.
>
> The disallowance by the Second Division stems from the non-compliance of the sales with the invoicing requirements of the NIRC, as amended, *for purposes of the refund claim*. This non-compliance with Sections 113 and 237 *cannot*, however, change the nature of these transactions as zero-rated sales, which is provided by law. In other words, non-compliance with the invoicing requirements of Sections 113 and 237 does *not* render these zero-rated sales subject to 12% under Section 105 of the NIRC, as amended.
>
> Second, in *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*, the Supreme Court upheld the finding of the CTA *En Banc* that the transaction sale made by a taxpayer is entitled to the benefit of zero-rated VAT *despite its failure to comply with invoicing requirements* as mandated by law:
>
> xxx xxx xxx
>
> *Third*, the CIR failed to raise the point that there was deficiency assessment against the taxpayer that is intimately related to and inextricably intertwined with its right to claim for a tax refund for the same year.
>
> It bears emphasis that the CTA does *not* have assessment powers. The term 'assessment' refers to the determination of amounts due from a person obligated to make payments. In the context of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer under the NIRC.
>
> The power and duty to assess national internal revenue taxes are lodged with the BIR as stated in Sections 2 and 6 of the NIRC, as amended.
>
> If the CIR were of the opinion that the unsubstantiated sales should have been subjected to 12% VAT, the BIR could have initiated an investigation against the taxpayer once the taxpayer filed the administrative refund claim by issuing a Letter of Authority. After investigation, it could have issued an assessment based on the findings of the revenue examiners. But in the *Answer* as well as the *Joint Stipulation of Facts and Issues* and even during the trial, the CIR *neither* manifested, in general, that a deficiency VAT was found due from the taxpayer after an assessment *nor* raised, in particular, that a deficiency VAT was due on those disallowed sales. Apparently, without its own assessment, the CIR merely relied upon the findings in the assailed decision to hold the taxpayer liable for 12% VAT on the disallowed sales. Prescription to issue an assessment based on the taxpayer's 2004 VAT returns had already set in.

Fourth, as discussed in the assailed resolution, the Supreme Court has ruled, in *Commissioner of Internal Revenue v. Toledo Power Company*, that while the offsetting of taxes due against the taxes covered by the refund claim was allowed in claims under Section 229, the same does *not* apply in claims under Section 112 of the NIRC, as amended:

xxx xxx xxx

Finally, the CIR's reliance on *Air Canada v. Commissioner of Internal Revenue* is misplaced. *Air Canada* is a claim for refund of alleged erroneously paid income taxes based on the revised definition of Gross Philippine Billings under Section 28(A)(3)(a) in relation to Section 229 of the NIRC, as amended. As already pointed out, this case involves a refund claim under Section 112 in relation to Section 106(A)(2)(a)(5) of the NIRC, as amended. Thus, the facts obtaining in the *Air Canada* cases are not on all fours with the case at bar." (*citations omitted*)

In fine, there being no new issues or arguments raised in the motion, this Court finds no compelling reason to disturb or overturn the assailed decision.

WHEREFORE, premises considered, the *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice