REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CE CASECNAN WATER AND ENERGY COMPANY, INC., *Petitioner,*	CTA CASE No. 9006 For: Refund
-versus-	Members: DEL ROSARIO, P.J., *Chairperson,* UY, and MINDARO-GRULLA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 17 2019 9:59 am

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RESOLUTION

MINDARO-GRULLA, J.:

Before the Court are the Motions for Partial Reconsideration filed by CE Casecnan Water and Energy Company, Inc. (CE Casecnan)[1] and the Commissioner of Internal Revenue (CIR),[2] seeking to set aside the Amended Decision promulgated on February 22, 2019,[3] the dispositive portion of the assailed Amended Decision reads:

> "**WHEREFORE,** premises considered, the Motion for Partial Reconsideration filed by the Commissioner of Internal Revenue is hereby **DENIED** for lack of merit.
>
> On the other hand, the Motion for Partial Reconsideration filed by CE Casecnan Water and Energy Company is **PARTIALLY GRANTED.**

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[1] Dockets, Vol. II, filed on March 26, 2019.
[2] Dockets, Vol. II, filed on March 18, 2019.
[3] Dockets, Vol. II.

Accordingly, the assailed Decision dated October 19, 2018 is hereby modified and shall read as follows:

> "**WHEREFORE**, premises considered, the Petition for Review with Supplemental Petition for Review filed by CE Casecnan Water and Energy Company on March 11, 2015 and June 11, 2015, respectively, are hereby **PARTIALLY GRANTED.** Accordingly, the Commissioner of Internal Revenue is **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of CE Casecnan Water and Energy Company in the amount of **₱6,872,939.30,** representing its unutilized excess input VAT attributable to its zero-rated sales for the four quarters of calendar year 2013."
>
> **SO ORDERED."**

In his motion, the CIR reiterates that CE Casecnan is not the proper party to seek for refund. The CIR insists that CE Casecnan's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are entitled to zero-rated VAT pursuant to Section 15 of Republic Act (RA) 9513, otherwise known as "An Act Promoting the Development, Utilization and Commercialization of Renewable Energy Resources and for other Purposes". Consequently, no output tax should be shifted to RE developers such as CE Casecnan, as the CIR claims.

The CIR further claims that the Court merely assumed that CE Casecnan's input VAT is attributable to its zero-rated sales and that the law requires that only "creditable input taxes" that are "directly attributable" may be refunded.

CE Casecnan filed its Comment[4] on April 16, 2019.

On the other hand, CE Casecnan, in its Motion for Partial Reconsideration, contends that it was able to substantiate the

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[4] *Ibid.*

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amount of ₱633,971.01 representing input VAT on local purchases of non-capital goods and service and on importations of non-capital goods reclassified as purchases of capital goods exceeding ₱ 1 million; that mere presentation of Bureau of Customs (BOC) single administrative documents (SADs) and statement of settlement of duties and taxes without presenting other documents to verify payment of VAT, such as BOC and/or bank official receipts, Import Entry Internal Revenue Declaration (IEIRD), and bank certifications are enough to grant the refund of the ₱633,971.01.

The CIR filed his Comment[5] on April 24, 2019.

Both motions are bereft of merit.

For the CIR's Motion for Partial Reconsideration, a perusal of such would show that the allegations therein are a mere rehash of his arguments. As enunciated by this Court in CTA EB No. 1510[6] involving the same parties, R.A. 9513, which was applied in *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*[7] *("the Coral Bay Case"),* cannot be applied in the case of CE Casecnan. In *Coral Bay*, the taxpayer's principal place of business was located inside the special economic zone (ECOZONE), and the *Coral Bay Case* is highly instructive, *i.e.,* the ratio for being zero-rated for the purchases is that the goods/services are destined for consumption inside the ECOZONE and are considered as consumption outside the Philippine Territory. On the other hand, CE Casecnan's principal office is located neither in foreign soil nor one considered by law as such, thus, within the Philippines, which makes it legally feasible for its supplier of goods and/or services to pass on the VAT charged there onto it. To reiterate:

> "xxx. Ergo, the VAT imposed on respondent's purchases shall be considered as its input taxes/ which in turn may be claimed by it for possible input VAT refund. Being the entity that ultimately bears the burden of the tax, respondent is the proper party to claim the same." (Citations omitted.)

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[5] *Ibid.*
[6] *Ibid.*
[7] G.R. No. 190506, June 13, 2016.

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Also, contrary to the CIR's insistence, a plethora of this Court's cases[8] rules that Section 112(A) of the National Internal Revenue Code of 1997 does not decree that the input tax be directly attributable to the taxpayer's zero-rated sales. As a matter of fact, the Code allows allocation of input taxes in case the same cannot be directly and entirely attributed to any of the sales,[9] as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.-*
>
> *(A) Zero-rated or Effectively Zero-rated Sales.* Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: xxx *Provided further*, <u>That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales</u>: *Provided finally*, That for a person making sales that are zero-rated under Section 108(8)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales." (Underlining supplied.)

Section 112(A) of the NIRC of 1997, as amended, only mandates that the input tax paid or incurred is attributable to a taxpayer's zero-rated sales, and in this case, the Court already found that the input VAT of CE Casecnan amounting to ₱6,402,530.54 is attributable to its valid zero-rated sales

[8] *Toledo Power Company vs. Commissioner of Internal Revenue*, CTA Case No. 7233 & 7294, December 19, 2018; *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 9057, November 20, 2018; *Deutsche Knowledge Services PTE ltd. vs. Commissioner of Internal Revenue,* CTA Case No. 9079, August 8, 2018; *Foseco Philippines Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 8879, April 2, 2018; *Coral Bay Nickel vs. Commissioner of Internal Revenue,* CTA Case No. 8905, October 19, 2017.
[9] *Deutsche Knowledge Services PTE ltd. vs. Commissioner of Internal Revenue,* CTA Case No. 9079, August 8, 2018, citing *CBK Power Company Limited vs. Commissioner of Internal Revenue,* CTA Case No. 7887, February 2, 2018.

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based on the evidence presented by it.[10] It does not require that the input tax be directly attributable to petitioner's zero-rated sales.[11] Input taxes that bears a direct or indirect connection with a taxpayer's zero-rated sales satisfies the requirement of the law.[12] *Ubi lex non distinguit nee nos distinguire debemus*. When the law does not distinguish, we must not distinguish.[13]

On the other hand, CE Casecnan's sole contention that mere presentation of BOC SADs and statement of settlement of duties and taxes are enough to grant the refund of the ₱633,971.01 is also without merit. Claims are already disallowed by this Court in numerous cases[14] since the input VAT on importations were, although supported with BOC Certified SADs and IEIRD, were without BIR official receipts or certification from authorized agent bank to prove payment of VAT. In fact, CE Casecnan was able to present the above-mentioned required documents for its several refund cases[15] before this Court, thus, cannot thereafter feign non-compliance with the said requirements.

WHEREFORE, premises considered, both Motions for Partial Reconsideration are hereby **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[10] *Decision* dated October 19, 2018, *Docket Vol. II.*
[11] *Deutsche Knowledge Services, Supra* note 8.
[12] *Deutsche Knowledge Services; Coral Bay Nickel, Supra* note 8.
[13] *Coral Bay Nickel, Supra* note 8, citing *Philippines Free Press, Inc. vs. Court of Appeals*, G.R. No. 132864, October 24, 2006.
[14] *Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue*, CTA Case No. 9101, September 4, 2018; *Lepanto Consolidated Mining Company vs. Commissioner of Internal Revenue*, CTA Case No. 8928, September 19, 2017; *Nokia Philippines vs. Commissioner of Internal Revenue,* CTA Case No. 8481, July 2, 2014; *Penn Philippines, Inc. (Formerly Penn Gold-Zack Philippines, Inc. and Formerly: Goldzack Philippines, Inc.) vs. Commissioner of Internal Revenue*, CTA Case No. 7457, April 6, 2010.
[15] CTA Case No. 8620, September 16, 2014 and CTA Case No. 8446, December 16, 2013.

WE CONCUR:

On Official Business
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice