REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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IBEX PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2533
(CTA Case No. 9802)

Present:

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

Promulgated:

NOV 10 2022 3:30pm

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DECISION

UY, J.:

Before the Court *En Banc* is a *Petition for Review*[1] filed on November 24, 2021 by petitioner, IBEX Philippines, Inc., against respondent, Commissioner of Internal Revenue, praying for the setting aside and reversal of the Decision dated November 18, 2020[2], and the Resolution dated October 7, 2021[3], both rendered by the First Division of this Court (Court in Division) in CTA Case No. 9802,

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[1] EB Docket, pp. 8 to 28.
[2] Penned by Associate Justice Catherine T. Manahan, and concurred by Presiding Justice Roman G. Del Rosario, EB Docket, pp. 33 to 46.
[3] EB Docket, pp. 49 to 53.

entitled *"IBEX Philippines, Inc., Petitioner, versus Commissioner of Internal Revenue, Respondent".* The dispositive portions thereof respectively read as follows:

Decision dated November 18, 2020:

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

Resolution October 7, 2021:

> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

Petitioner IBEX Philippines Inc. is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is registered with the Bureau of Internal Revenue (BIR) since August 4, 2005, with address at 8/F Hanston Bldg., Don Francisco Ortigas, Jr. Road, Ortigas Center, San Antonio, Pasig City 1605.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue (CIR) with office address at BIR Building, Diliman, Quezon City.

On December 29, 2017, petitioner filed an administrative claim for refund under Section 112 (A), in relation to Section 112(C) of the Tax Code, covering the period from October 1, 2015 to June 30, 2016.

Respondent then issued the Letter of Authority (SN: eLA201600002526; LOA-043-2018-00000003) dated February 6, 2018 for the mandatory audit of petitioner.

Thereafter, in the letter dated February 23, 2018 issued by Revenue District Officer Rufo B. Ranario of RDO No. 043, Revenue Region No. 7 of the BIR, petitioner's administrative claim was denied. The said letter was received by petitioner on March 9, 2018.

Aggrieved, petitioner filed a *Petition for Review* before this Court on April 10, 2018, docketed as CTA Case No. 9802, praying for the refund of ₱9,138,100.67, representing its alleged unutilized input value-added tax (VAT) attributable or allocated to zero-rated sales for the period October 1, 2015 to June 30, 2016. The case was originally assigned to the Third Division of this Court.

Respondent filed his *Answer* on May 18, 2018, stating among others, that petitioner's judicial claim should be denied for its failure to substantiate its claim for refund at the administrative level. According to respondent, petitioner has the burden of proof to establish complete submission of the required documents, otherwise, the refund claim should not prosper. In this case, petitioner allegedly failed to submit complete supporting documents. Further, respondent maintains that partaking the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language.

The Pre-Trial Conference was initially set on October 23, 2018. However, pursuant to the Order dated September 25, 2018, CTA Case No. 9802 was transferred to the First Division of this Court, and the Pre-Trial Conference was cancelled and reset until further notice. Thereafter, the Pre-Trial Conference was held on February 7, 2019. The Court in Division issued the Pre-Trial Order on April 29, 2019.

During trial, petitioner presented the testimonies of the following witnesses, namely: (1) John Michael Arceo, petitioner's Tax and Corporate Compliance Manager; and (2) Neil U. Sison, the Court's duly-commissioned Independent Certified Public Accountant (ICPA).

Petitioner filed its *Formal Offer of Evidence* on June 26, 2019. Respondent, however, failed to submit his comment/opposition thereto. In the Resolution dated September 13, 2019, the Court in Division admitted petitioner's exhibits, except for Exhibit "P-18-L-12", for not being found in the records.

On the other hand, respondent's counsel manifested during the hearing held on June 11, 2019[4], that he will not present any evidence for respondent.

Subsequently, petitioner filed its *Memorandum* on November 18, 2019, while respondent, did not file her memorandum. On December 19, 2019, CTA Case No. 9802 was submitted for decision.

On November 18, 2020, the Court in Division rendered the assailed Decision[5], denying the *Petition for Review* in CTA Case No. 9802 for lack for merit.

On December 28, 2020, petitioner filed his *Motion for Reconsideration (of the Decision promulgated on 18 November 2020)*[6]. Respondent failed to file her comment thereto[7] per *Records Verification* dated March 15, 2021 issued by the Judicial Records Division of this Court.

In the assailed Resolution[8] dated October 7, 2021, the Court in Division denied petitioner's *Motion for Reconsideration* for lack of merit.

Within the extension period granted by the Court *En Banc*[9], petitioner filed the instant *Petition for Review*[10] on November 24, 2021.

In the Resolution[11] dated February 15, 2022, respondent was directed to file his comment on the instant *Petition for Review* within ten (10) days from receipt thereof.

Respondent failed to file his comment despite notice, as per *Records Verification* dated April 5, 2022.[12] mb

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[4] Minutes of Hearing held on June 11, 2019, Division Docket, pp. 334 to 338.
[5] EB Docket, pp. 33 to 46; Division Docket (CTA Case No. 9802), pp. 468 to 481.
[6] Division Docket (CTA Case No. 9802), pp. 482 to 490.
[7] *Records Verification* dated March 15, 2021, Division Docket (CTA Case No. 9802), p. 497.
[8] Division Docket (CTA Case No. 9802), pp. 504 to 508.
[9] *Motion for Extension of Time (To File Petition for Review* filed on November 9, 2021, EB Docket, pp. 1 to 3; Minute Resolution dated November 15, 2021, EB Docket, p. 7
[10] EB Docket, pp. 8 to 28.
[11] EB Docket, pp. 58 to 59.
[12] EB Docket, p. 60.

On May 4, 2022, the instant case was submitted for decision.[13] Hence, this Decision.

THE ISSUES

Petitioner filed the present *Petition for Review* on the basis of the following assignment of errors:[14]

> "**ASSIGNMENT OF ERRORS**
>
> I.
>
> **The First Division of this Honorable Court gravely erred in failing to consider the evidence on record that proves that Petitioner performs call center services in the Philippines.**
>
> **II.**
>
> **The First Division of this Honorable Court gravely erred in failing to consider that there is preponderance of evidence for Petitioner's recovery of its excess and unutilized input VAT granted under the National Internal Revenue Code of the Philippines since Respondent did not present any evidence to refute Petitioner's entitlement thereto.**
>
> **III.**
>
> **The First Division of this Honorable Court gravely erred in allowing the government to be unjustly enriched of Petitioner's excess and unutilized input VAT."**

Petitioner's arguments:

Petitioner argues that contrary to the ruling of the Court in Division, the evidence on record sufficiently establishes that the services it rendered to its client are performed in the Philippines and are not in the nature of "processing, manufacturing, or repacking of goods". Allegedly, its *Articles of Incorporation*, Certificate of

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[13] EB Docket, pp. 62 to 63.
[14] *Petition for Review*, EB Docket, pp. 12 to 13.

Registration with the BIR, VAT returns, official receipts and certificate of inward remittance are sufficient to prove that petitioner is performing call center services in the Philippines.

Further, petitioner contends that a Service Agreement is not an indispensable requirement to prove that it performs call center services in the Philippines.

Allegedly, the payment for petitioner's services is in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP; and that the input VAT it incurred in the course of its business are: (1) duly paid; (2) attributable to zero-rated sales; (3) and have not been applied against output taxes during and in the succeeding quarters.

THE COURT *EN BANC'S* RULING

Before We delve into the merits of the instant Petition for Review, We shall first determine the timeliness of the same.

The instant Petition for Review was timely filed.

Under Section 3(b), Rule 8, of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended,[15] a party adversely affected by a decision or a resolution of the Court in Division on a motion for reconsideration or new trial, may file a petition for review with the Court *En Banc* within fifteen (15) days from receipt of the questioned decision or resolution.

In the instant case, records show that petitioner received the assailed Resolution dated October 7, 2021 on October 25, 2021[16]. Accordingly, petitioner had fifteen (15) days therefrom or until

[15] Section 3(b), Rule 8, of the RRCTA provides as follows:
"Section 3. *Who may appeal; period to file petition.-*

xxx xxx xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review **within fifteen days from receipt of a copy of the questioned decision or resolution**."

[16] Division Docket (CTA Case No. 9802), p. 503.

November 9, 2021, within which to file its appeal with the Court *En Banc*.

On November 9, 2021, petitioner filed a *Motion for Extension of Time (To File Petition for Review)*, which was granted by the Court *En Banc* giving petitioner a period of fifteen (15) days from November 9, 2021 or until November 24, 2021, within which to file its *Petition for Review*. Thus, the timely filing of the instant *Petition for Review* on November 24, 2021, vested this Court with jurisdiction over the present petition.

The Court shall now proceed to determine the merits of the instant *Petition for Review*.

The Court in Division correctly ruled that petitioner's sales of services failed to qualify for VAT zero-rating.

In the assailed Decision, the Court in Division held that petitioner's sales of services to its sole client, IBEX Global Bermuda Ltd., do not qualify for VAT zero-rating for failure of petitioner to prove the following: (1) that the nature of its services was other than processing, manufacturing, or repacking of goods; and (2) that the same were performed in the Philippines.

Section 108(B)(1) and (2) of the NIRC of 1997, as amended, is instructive as to when the rendition of services is considered as zero-rated, *to wit:*

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (B) *Transactions Subject to Zero Percent (0%) Rate.* — The following services **<u>performed in the Philippines</u>** by VAT-registered persons shall be subject to zero percent (0%) rate:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the

Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) **Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted <u>outside the Philippines</u> or to a nonresident person not engaged in business who is <u>outside the Philippines</u> when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**;" *(Emphases and underscoring supplied.)*

Based on the foregoing provision, in order that the sale or supply of services may be subject to the VAT rate of zero percent (0%) rate, the following essential elements must be established, to wit:

1) The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;[17]

2) The services fall under any of the categories under Section 108(B)(2),[18] or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;[19]

3) The services must be performed in the Philippines[20] by a VAT-registered person; and

[17] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017; *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Accenture, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

[18] *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[19] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

[20] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra.

4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.[21]

Relative to the ***first essential element***, the Supreme Court in the case of *Accenture, Inc. vs. Commissioner of Internal Revenue*[22], ruled that it is not enough that the recipient of the service be proven to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation".

Further, in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[23], the Supreme Court emphasized that the service-recipient must **not** be doing business in the Philippines.

Hence, to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported **at the very least** by **both** *SEC Certificate of Non-Registration of Corporation/ Partnership* **and** proof of incorporation, association or registration in a foreign country *(e.g., certificate/articles of foreign incorporation/ association/ registration).* As a corollary, notwithstanding the presentation of the said documents, there must be no indication that any of the recipients of petitioner's services is doing business in the Philippines, consistent with the ruling in the *Burmeister case.*

As found by the Court in Division and as borne out by the records, petitioner was able to establish compliance with the *first* essential element by presenting: (1) the *Certification of Non-Registration of Company*[24] issued by the SEC to the effect that the records of the latter do not show the registration of IBEX Global Bermuda Ltd. as a corporation or as a partnership; and (2) the Authenticated copy of IBEX Global Bermuda Ltd.'s Certificate of Incorporation[25], as proof that the latter was incorporated in the Islands of Bermuda and is doing business outside the Philippines.

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[21] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, supra;
[22] G.R. No. 190102, July 11, 2012.
[23] G.R. No. 153205, January 22, 2007.
[24] Exhibit "P-10", Division Docket (CTA Case No. 9802), p. 399.
[25] Exhibit "P-9", Division Docket (CTA Case No. 9802), pp. 395 to 398.

Anent the ***second* and *third* essential elements**, petitioner insists that the evidence on record (*i.e., Articles of Incorporation, Certificate of Registration* with the BIR, VAT returns, official receipts and certificate of inward remittance) are sufficient to prove that it performed call center services in the Philippines.

We partially agree with petitioner.

A perusal of petitioner's *Amended Articles of Incorporation*,[26] reveals that petitioner is engaged in the business of providing call center services. Its primary purpose states as follows:

> "To engage in the business of providing call/contact center and other facilities and services as may be required by manufacturers and sellers of goods and services and the buyers and consumers thereof, through digital and electronic software applications and other services to facilitate and complete commercial transactions; and in general, to carry on and undertake such activities which may seem to the Corporation capable of being conveniently carried on in connection with the above purposes, or calculated, directly or indirectly, to enhance the value of or render profitable, any of the Corporation's property or rights."

Further, petitioner's witness, John Michael Arceo, testified on the nature of the services rendered by petitioner to Ibex Global Bermuda Ltd, to wit:[27]

> "Q18. **What is the business of Petitioner** and who are its customers or clients during the Claim Period?
>
> A18. **During the Claim Period, the Company provided BPO services (contact center services and facilities) to its foreign client, IBEX Global Bermuda Ltd.**

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[26] Exhibit "P-2", Division Docket (CTA Case No. 9802), p. 366.
[27] *Affidavit in Lieu of Direct Examination of John Michael Arceo*, Exhibit "P-1", Division Docket (CTA Case No. 9802), p. 209.

> Q19. How many clients did the Company serve during the Claim Period?
>
> A19. The Company had only one client during the Claim Period. IBEX Global Bermuda Ltd. mentioned above."

Based on the foregoing, it is evident that the nature of services rendered by petitioner to IBEX Global Bermuda Ltd. falls within the scope of *"services other than processing, manufacturing or repacking of goods"* contemplated under Section 108 (B) (2) of the NIRC of 1997, as amended. Thus, the *<u>second</u> essential element* has been sufficiently complied with by petitioner.

However, as regards the ***<u>third</u> essential element***, the Court *En Banc* sustains the findings of the Court in Division that petitioner failed to establish that the subject services were actually rendered in the Philippines.

Contrary to petitioner's contention, the fact that its registered address is located in the Philippines and that it made purchases or incurred expenses in the Philippines, do not necessarily establish that the services it rendered to IBEX Global Bermuda Ltd. were performed in the Philippines.

It bears noting that the issue as to whether or not petitioner performed services in the Philippines is a question of fact. Hence, it must be proven by specific evidence. In the instant case, however, a careful examination of petitioner's *Formal Offer of Evidence* filed on June 26, 2019, shows that it did not offer any evidence to prove that the subject services were performed in the Philippines. Further, the testimonies of petitioner's witnesses failed to support petitioner's allegation that the services were rendered in the Philippines.

More importantly, no proof of any service agreement or contract was adduced by petitioner. Hence, the Court *En Banc* is unable to ascertain whether the subject services were indeed performed in the Philippines.

Accordingly, We sustain the findings of the Court in Division that petitioner failed to satisfy all the requirements to prove that its sales to IBEX Global Bermuda Ltd. qualify for VAT zero-rating under Section 108 (B) (2) of the NIRC of 1997, as amended.

It bears emphasis that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[28]

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the Court in Division's Decision and Resolution promulgated on November 18, 2020 and October 7, 2021, respectively, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[28] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above 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