Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

HARTE-HANKS PHILIPPINES, INC., Petitioner, - versus - **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	EB Case No. 949 (CTA Case Nos. 7975 & 7998) Members: DEL ROSARIO, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *J.J.* Promulgated: SEP 26 2014 2:10 pm

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RESOLUTION

CASANOVA, J.:

For resolution is petitioner's Motion for Reconsideration (Re: Decision dated 28 April 2014)[1], filed on May 27, 2014, without any Comment from respondent per Records Verification Report dated August 26, 2014.

Petitioner seeks reconsideration of this Court's Decision dated April 28, 2014 (the "Assailed Decision") the decretal portion of which reads as follows:

> "**WHEREFORE**, finding no reversible error in the Assailed Decision dated July 2, 2012

[1] En Banc Docket, pp. 183-195

and the Assailed Resolution dated October 5, 2012, with regard to petitioner's claim for refund for the 4th quarter of taxable year 2007 (docketed as CTA Case No. 7998), the same are both hereby **AFFIRMED**.

As regards petitioner's claim for the 3rd quarter of taxable year 2007 (docketed as CTA Case No. 7975), the same is hereby **DENIED** for petitioner's failure to present any record of zero-rated sales for this period.

SO ORDERED."

In its Motion, petitioner states that, contrary to the ruling of this Court in the Assailed Decision, it was able to prove the existence of zero-rated sales. Petitioner argues that, at the onset, during CY 2007, it used the accrual method of accounting in recognizing income for VAT purposes. That, in such method, the moment the service is rendered, the party rendering such service already recognizes the corresponding income in its books even though said amounts have not been actually collected.

Petitioner further argues that the use of the accrual method by petitioner is supported by the report of the Court-commissioned Independent Certified Public Accountant (ICPA), Ms. Ma. Milagros F. Padernal, where it was stated that "[t]he zero-rated sales for the third and fourth quarters of taxable year 2007 shown in paragraph 5 which were reported as accrued sales in the 2007 Annual Income Tax Return (AITR) and the 2007 amended AITR [marked as Exhibits TT and UU, respectively], reconcile with the sales recorded in the general ledger and declared in the amended VAT returns upon collection in 2009 and 2010 (see Exhibit AA-1)." Thus, when petitioner rendered services to its affiliates, petitioner billed its affiliates and collected a total of US $ 4,512,281.46 (Php199,826,905.49) as of June 30, 2010 for services it had rendered during the 3rd and 4th quarters of CY 2007.

Petitioner, likewise, avers that nowhere in the law can it be found that the taxpayer must show that it had been paid in full for its services so that it can be entitled to the refund of input VAT attributable to zero-rated sales. That, to hold otherwise would be to add a requirement that is neither in the law itself nor legislatively intended. It would be giving

Section 108 (B)(2), Tax Code a restricted meaning where no restriction is intended.

After perusal of the records and careful and thorough evaluation of petitioner's argument, the Court finds the Motion bereft of merit.

On petitioner's argument that it used the accrual method of accounting in recognizing income for VAT purposes, this Court finds the same to be fallacious.

Even assuming that petitioner reported its zero-rated sales as accrued sales in the 2007 Annual Income Tax Return and the amended Annual Income Tax Return, ergo, using the accrual method for income tax purposes, it does not follow that petitioner also reported its zero-rated sales as accrued sales in the 3rd and 4th quarters of 2007 as far as recognizing income for VAT purposes is concerned. In fact, if it is really petitioner's practice, for VAT purposes, to record its sales on accrual basis, petitioner should have recorded its zero-rated sales upon the performance of its services, regardless of when the payments for the same were collected.

Perusal of the VAT returns negates petitioner's allegation that it used the accrual method of accounting in recognizing its income for VAT purposes. As clearly seen, the services rendered for the 3rd and 4th quarters of 2007 were only reported in its VAT Returns for the 3rd quarter of 2009 to 2nd quarter of 2010. Apparently, the sales were recognized when the payments for the services rendered during the 3rd and 4th quarters of 2007 were received only on the 3rd quarter of 2009 to 2nd quarter of 2010, thus, following the cash basis of accounting for VAT purposes.

As already emphasized in the Assailed Decision, the value added tax on sale of services accrues upon actual or constructive receipt of payments or the consideration by the seller of service, as evidenced by the official receipts, regardless of whether or not the services have been rendered. Moreover, as ruled in the case of *Philippine Fast Ferry Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6302, August 15, 2002*, the VAT should not be based on the income that must have been received but on the income that was actually received. Although the taxable transaction is the past, present or future performance of service, the tax accrued only upon actual or constructive receipt of consideration. Thus, when the seller received no payment, no value added tax (output tax) liability arises.

Corollary thereto, the zero-rated sales supported by official receipts to where the input VAT being claimed by petitioner may be attributed shall be recognized only, at the earliest, on the 3rd quarter of 2009. Considering so, and in accordance with Section 112(A) of the NIRC of 1997, petitioner may only apply for a refund or issuance of tax credit within two years reckoned from the close of taxable quarter when such sales were made, *i.e.*, within two years from September 30, 2009. However, since the present claim was filed even before the 3rd quarter of 2009 had closed on September 30, 2009, the same shall be considered to have been prematurely filed on June 24, 2009.

WHEREFORE, finding no reversible error in the Assailed Decision to warrant reconsideration thereof, the petitioner's Motion for Reconsideration (Re: Decision dated 28 April 2014) is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice