REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

MANULIFE DATA SERVICES, INC.,
Respondent.

CTA *EB* NO. 2183
(CTA Case No. 9126)

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MANULIFE DATA SERVICES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent,

CTA *EB* NO. 2191
(CTA Case No. 9126)

Members:

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

Promulgated:

NOV 30 2023 4:25pm

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RESOLUTION

CUI-DAVID, J.:

For the resolution of this Court are the following:

1. ***Motion for Reconsideration*** posted by the Commissioner of Internal Revenue ("**CIR**") on April 18, 2023,[1] with ***Comment (Re: Motion for Reconsideration,***

[1] *En Banc* ("*EB*") Docket, CTA EB No. 2183, pp. 205-211.

dated 19 April 2023) posted by Manulife Data Services, Inc. ("**MDSI**") on July 17, 2023;[2] and,

2. ***Motion for Reconsideration*** filed by MDSI on April 14, 2023, [3] without the CIR's comment per *Records Verification* dated August 7, 2023.[4]

The *Motions for Reconsideration* separately filed by the CIR and MDSI assail the *Decision*[5] dated March 31, 2023 rendered by the Court *En Banc* with the following dispositive portion:

> **WHEREFORE**, in light of the foregoing, the *Petition for Review* filed by the Commissioner of Internal Revenue in CTA *EB* No. 2183, and the *Petition for Review* filed by Manulife Data Services, Inc. in CTA *EB* No. 2191, are **DENIED** for lack of merit.
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> The *Decision* dated 5 July 2019 and the *Resolution* dated 7 November 2019 in CTA Case No. 9126 are **AFFIRMED.**
>
> **SO ORDERED.**

MDSI assails the finding of the Court *En Banc* that its sale of services to Manufacturers Life Insurance Company ("**MLIC**") does not qualify for zero-rating for its failure to prove that MLIC is a non-resident foreign corporation ("**NRFC**"). MDSI argues that Section 108(B)(2) of the National Internal Revenue Code ("**NIRC**") of 1997, as amended, mentions two (2) categories of service-recipient, *i.e.*, "a person engaged in business conducted outside the Philippines" and "a non-resident person not engaged in business who is outside the Philippines when the services are performed." According to MDSI, the qualifier "non-resident" appears only in the second of these categories. Thus, according to MDSI, it has satisfied the requirements to show that its sale of services to MLIC is zero-rated, as it was able to show that MLIC is not doing business in the Philippines.

Conversely, the CIR argues that the Court erred in ruling that MDSI has proved that the claimed input value-added tax ("**VAT**") was not carried over and applied to subsequent periods. The CIR contends that the information contained in MDSI's VAT return for the taxable year ("**TY**") 2015 is still

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[2] *Id.*, pp. 228-232.
[3] *Id.*, pp. 188-192.
[4] *Id.*, unpaged.
[5] *Id.*, pp. 162-187.

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subject to their audit. According to CIR, MDSI failed to present all the VAT returns for TY 2015. Finally, the CIR contends that input VAT must be directly attributable to zero-rated sales to be considered refundable.

The Court *En Banc* finds no merit in the instant *Motions*.

MDSI failed to prove that its sales of services to MLIC are qualified for zero rating.

As We have adequately stated in the assailed *Decision*, it is imperative for MDSI to prove that "the recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed"[6] for its sale or supply of services to be subject to the VAT rate of zero percent (0%) under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -
>
> ... ...
>
> *(B) Transactions Subject to Zero Percent (0%) Rate* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.
>
> ... ...
>
> (2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines 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); ... .

MDSI argues that there are two (2) categories of service recipients under Section 108(B)(2), *i.e.*, "a person engaged in business conducted outside the Philippines" and "a non-resident person not engaged in business who is outside the Philippines when the services are performed," and that the

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

qualifier "non-resident" only applies to the second category. Thus, MDSI posits that it is not required to prove that MLIC is a non-resident, considering that the first category of service recipients does not require so.

We are not convinced. The matter has already been settled by jurisprudence.

As We have stated in the assailed Decision, [7] in *Commissioner of Internal Revenue v. Macquarie Offshore Services Pty., Ltd.,*[8] the Supreme Court emphasized that for the sale of services to qualify for zero-rating, it must be established that the recipient of the services is not only a foreign corporation but **must also be a non-resident corporation or one that is <u>not engaged</u> in trade or business in the Philippines**. This echoes the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[9]

Accordingly, to argue that it is sufficient to prove that a foreign corporation is engaged in business conducted outside the Philippines without proving that the foreign corporation is *not doing business in the Philippines* is flawed.

With this, We reiterate that to be considered as an NRFC, the entity must be supported, ***at the very least***, by **both** (1) a Securities and Exchange Commission ("**SEC**") Certificate of Non-registration of Corporation /Partnership **and** (2) a Certificate/Article of Foreign Incorporation/Association. Additionally, there must be *no indication* that the recipient of the services is doing business in the Philippines.

To recall, MDSI presented a consularized *Letters Patent of Amalgamation,* proving that MLIC is a foreign corporation. Such does not prove whether MLIC is not doing business in the Philippines, which is **another requirement** to qualify for zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

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[7] Assailed *EB* Decision, p. 17.
[8] G.R. No. 225169 (Notice), 6 October 2021, citing the cases of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra, Accenture, Inc. v. Commissioner of Internal Revenue, supra, Sitel Phils. Corp. v. Commissioner of Internal Revenue, supra.*
[9] G.R. No. 234445, 15 July 2020.

MDSI presented MLIC-PH's letter to the Insurance Commission ("**IC**") for the authority to close the Philippine business and withdraw the license. However, We have noted that such filing with the IC only proves that MLIC no longer *intends* to continue with a specific business in the Philippines that the IC regulates. Accordingly, SEC Certificate of Non-Registration of Corporation /Partnership establishes that an entity is not doing business in the Philippines.

The above requirements were likewise set forth by this Court in a plethora of cases, most recently in *Knutsen Philippines, Inc. v. Commissioner of Internal Revenue,*[10] *Procter & Gamble International Operations SA-ROHQ v. Commissioner of Internal Revenue,* [11] *Maxima Machineries, Inc. v. Commissioner of Internal Revenue,* [12] *Macquarie Offshore Services Pty—Ltd.-Philippine Branch v. Commissioner of Internal Revenue,*[13] among many others.

We see no compelling reason to depart from our consistent rulings.

Therefore, We maintain our ruling that MDSI failed to discharge its burden of proof and that MDSI's sales of services to MLIC fail to qualify for zero rating.

MDSI has proved that the claimed input VAT was not carried over and applied to subsequent quarters.

Anent the CIR's *Motion*, We maintain our ruling that the Court in Division correctly observed in its *Decision*[14] that even if MDSI carried over the claimed input VAT to the succeeding quarters, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the 1st quarter of CY 2015.

At the risk of being repetitive, We quote with approval the discourse of the Court in Division on the matter, [15] *viz.*:

[10] CTA *EB* Case No. 2581 (CTA Case No. 9564), 23 August 2023.
[11] CTA *EB* Case No. 2638 (CTA Case Nos. 9485 & 9526), 14 August 2023.
[12] CTA *EB* Case No. 2590 (CTA Case No. 9453), 18 July 2023.
[13] CTA *EB* Case No. 2431 (CTA Case No. 9722), 25 January 2023.
[14] Annex "A" of the Petition for Review, *Rollo*, CTA *EB* No. 2183, p. 90.
[15] *Id.*

The above-computed excess input VAT amounting to ₱33,737,520.09 is thus attributable to zero-rated sales. Consequently, petitioner's duly substantiated excess input VAT attributable to the declared valid zero-rated sales of ₱83,298,123.56 amounts only to ₱1,305,567.11, computed as follows:

Excess input VAT available for refund		₱33,737,520.09
Multiply by ratio of valid zero-rated sales over total sales:		
Valid zero-rated sales	₱83,298,123.56	
Divide by total zero-rated sales per VAT returns	₱2,152,529,797.47	3.87%
Input VAT allowed for a refund.		**₱1,305,567.11**

Moreover, **although the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the 1st quarter of CY 2015.** Therefore, the subject claim no longer formed part of the excess input VAT of ₱80,430,008.82 as of the end of the 1st quarter of CY 2015 that was to be carried over/applied to the succeeding quarters. As such, it eliminates the possibility that the present claim would be applied to future output VAT liability. [*Emphasis supplied*]

An input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable.

In his *Motion*, the CIR points to the use of the phrase "directly attributable" of Section 112 of the NIRC of 1997, as amended.

The CIR's argument deserves scant consideration. We quote our *Decision*:

We have consistently held that Section 112 (A) of the NIRC of 1997, as amended, does not require that input taxes be directly attributable to the zero-rated sales of the claimant and only requires that the input taxes be attributable to the zero-rated sales. Nothing in the provision states that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale for it to be creditable or refundable. The aforementioned provision allows as a tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales.

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> Input taxes, whether directly or indirectly attributable to the claimant's zero-rated sales, may be the subject of a refund under Section 112 (A) of the NIRC of 1997, as amended. Where the law does not distinguish, neither should we.
>
> Section 112 (A) of the NIRC of 1997, as amended, recognizes the situation wherein a claimant's input tax is not directly and entirely attributable to its zero-rated sales by allowing the proportionate allocation of the input taxes based on the total volume of sales. [*Citations omitted.*]

WHEREFORE, in light of the foregoing considerations, the *Motion for Reconsideration* filed by the Commissioner of Internal Revenue and the *Motion for Reconsideration* filed by Manulife Data Services, Inc. are **DENIED** for lack of merit.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ON LEAVE
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice