REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ATLASSIAN PHILIPPINES, INC., Petitioner,	CTA Case No. **10011**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **BACORRO-VILLENA,** *and* **CUI-DAVID,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 22 2022 2:50 PM

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution are the following:

1. Petitioner Atlassian Philippines, Inc.'s (**petitioner**'s/**API**'s) "Motion for Reconsideration"[1] (**MR**) filed on 02 November 2021[2], without respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) comment[3]; and,

2. Respondent's "Motion for Partial Reconsideration"[4] (**MPR**) filed on 02 November 2021[5], with petitioner's Comment[6] filed on 08 February 2022.

---

[1] Division Docket, Volume II, pp. 573-586.
[2] Received by the Court on 17 November 2021.
[3] *Per* Records Verification dated 04 March 2022.
[4] Division Docket, Volume II, pp. 589-607.
[5] Received by the Court on 17 November 2021.
[6] Division Docket, Volume II, pp. 613-615.

Both the MR and respondent's MPR seek the partial reversal of the Court's Decision promulgated on 06 October 2021[7] (**assailed Decision**). The dispositive portion of the assailed Decision reads as follows:

> ...
>
> **WHEREFORE**, premises considered, the present Petition for Review filed by petitioner Atlassian Philippines, Inc. on 18 January 2019 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue, is hereby **ORDERED TO REFUND** in favor of petitioner the reduced amount of ₱5,228,551.41, representing unutilized input VAT attributable to its zero-rated sales for the first, second, third and fourth quarters of fiscal year ending 30 June 2017.
>
> **SO ORDERED.**
>
> ...

In the MR, petitioner mainly contends that the formula used by the Court is intrinsically wrong. For petitioner, since there was already a finding that its only activity is subject to 0% value-added tax (**VAT**), it follows that all its input taxes are necessarily attributable to zero-rated sales. Thus, there is no need to allocate when there is only one activity because allocation is applicable if the taxpayer is engaged in taxable, zero-rated and exempt sales, as provided in Section 112(A)[8] of the National Internal Revenue Code (**NIRC**) of 1997, as amended.

---

7 Id., pp. 530-572.

8 **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: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of 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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

...

Petitioner further argues that there is nothing in the law which considers invalid zero-rated sales as subject to 12% VAT or exempt therefrom. Consequently, by partially disallowing the refund to the extent of ₱2,928,681.69, the Court is essentially saying that the invalid zero-rated sales are subject to 12% VAT. In other words, petitioner contends that the Court unwittingly assessed it, clearly something that it could not do or authorized to make.

Petitioner likewise insists that the Supreme Court already settled the issue in *Commissioner of Internal Revenue v. Euro-Philippines Airline Services, Inc.*[9] (**Euro-Philippines**) on whether an invalid zero-rated sale could be imposed with 12% VAT. Following the said ruling, petitioner's sales must all be entitled to VAT zero-rating.

Moreover, the case of *Commissioner of Internal Revenue v. Northwind Power Dev't. Corporation*[10] (**Northwind**) is no longer controlling in view of *Euro-Philippines*. Petitioner thus reiterates that there is nothing in the law that treats an improperly documented export sale of services as subject to 12% VAT and any defect in such documentation would not make an export sale a domestic one.

As to disallowance of ₱27,525,053.87 as valid zero-rated sale, petitioner believes that whether the same was reported in the VAT return or not should not change the conclusion that all its input taxes are directly attributable to zero-rated sales (since petitioner is not engaged in any exempt activities or sales subject to 12% VAT). If the zero-rated sales in the VAT return is understated, there should be no impact on the claim for refund because the failure to report does not result in the understatement of any tax due or in the overstatement of valid input tax.

With respect to the disallowed zero-rated sale of $480,164.18 or ₱23,898,731.57 which was dated 13 July 2017, or beyond the period of claim for fiscal year (**FY**) 2017 ending 30 June 2017, petitioner avers that there is no harm when a taxpayer advances the reporting of its sales because the government will never be placed in a disadvantaged position. Petitioner adds that there is nothing that prevents the

---

9 G.R. No. 222436, 23 July 2018.
10 CTA EB Case Nos. 1037 & 1042, 16 December 2014.

taxpayer in reporting the gross receipts even if the revenues remain uncollected.

Anent the zero-rated sales paid through offsetting arrangements being not in accordance with Revenue Memorandum Circular (**RMC**) No. 42-2003[11], petitioner claims that the NIRC of 1997, as amended, does not require inward remittance of export sales hence, offsetting arrangements are allowed.

Petitioner adds that the list of documents enumerated in RMC No. 42-2003 are not cumulative or exclusive, and thus, any document that could prove that payment was made through offsetting should be allowed.

According to the petitioner, it was surprised with the Court's declaration that its documents (proving payment was made through offsetting arrangement) were self-serving. It maintained that all journal entries could only be done by the taxpayer and no one else and thus necessarily beneficial to it.

Petitioner also argues that respondent had the opportunity to review petitioner's zero-rated sales yet he made no mention of the grounds of denial that he forwarded to this Court. Since respondent has the exclusive and original jurisdiction to interpret the provisions of the NIRC of 1997, as amended, and decide on the claims for refund at the first instance under Section 4[12] thereof, it behooves the Court to respect respondent's decision, especially on matters where both parties are not in dispute.

---

[11] Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

[12] **SEC. 4.** *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* - The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

Petitioner also seeks the Court's reconsideration of the denied input taxes amounting to ₱229,652.51 supported by Withholding VAT (**WVAT**) Return (BIR Form No. 1600).[13] According to petitioner, the proper period to consider should be the period for which the return pertains to (not the date of filing), since tax returns could only be filed after the end of the taxable period. It was thus erroneous for the Court to consider the pertinent WVAT Return as dated outside the period of claim.

Lastly, petitioner maintains that the filing of the Petition for Review and the partial grant of the claim for refund do not cure due process rights violation. As respondent failed to give sufficient factual and legal reasons why the amount of ₱11,376,078.36 must be denied, the denial letter, to the extent that it improperly denies a portion of petitioner's claim, must be rendered invalid and consequently, the claim, for refund must be deemed fully granted.

On the other hand, respondent claims that petitioner is not entitled to the reduced amount of ₱5,228,551.41 that the Court granted.

According to respondent, petitioner's big-ticket purchases were not properly substantiated. Respondent contends that as required by Revenue Memorandum Order (**RMO**) No. 16-2007[14], proof of payment other than the invoices and receipts are required to be presented and submitted by the taxpayer.

Moreover, since the reason for denying the input tax related to the big-ticket purchases is clearly indicated in the letter of denial, petitioner cannot claim that there was no sufficient reason stated in such letter.

Respondent adds that since the Bureau of Internal Revenue (**BIR**) denied petitioner's administrative claim for refund due to petitioner's failure to submit complete documents, then the judicial

[13] Exhibit "P-16-42", USB (Exhibit "P-22"), pp. 34-36.

[14] Prescribing Additional Procedures in the Audit of Input Taxes Claimed in the VAT Returns By Revenue Officers and Amending "Annex B" of Revenue Memorandum Order (RMO) No. 53-98 With Respect to the Checklist of Documents to be Submitted by a Taxpayer Upon Audit of His/Its VAT Liabilities As Well As the Mandatory Reporting Requirements to be Prepared by the Assigned Revenue Officer/s Relative Thereto, All of Which Shall Form an Integral Part of the Tax Docket.

claim before this Court would be dismissible for its failure to substantiate the claim at the administrative level. This cannot be cured by petitioner by just submitting to this Court the previously lacking documents, citing *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.).*[15]

Respondent also contends that petitioner failed to prove that Atlassian Pty. Ltd. (**APL**), its sole client, is a corporation not doing business in the Philippines.

In support thereof, respondent avers that petitioner was established for the sole purpose of rendering services to APL. Moreover, petitioner is 99.4% owned by APL (and is short only of 0.6% to be wholly owned by it) which means that APL has almost complete control over petitioner. As such, it is clear that petitioner is merely an extension of APL's personality which translates into APL being engaged in business in the Philippines. Consequently, APL has the intention to have a continuity of conduct and to establish a continuous business in the Philippines through petitioner. Therefore, APL cannot be considered as not doing business in the Philippines and as such, petitioner's sale of services to APL cannot be treated as zero-rated.

We resolve.

PETITIONER'S MOTION FOR RECONSIDERATION

With respect to the invalidation of a portion of its zero-rated sales, petitioner mainly argues that: *first*, there is no need to allocate since it is only engaged in zero-rated sale of services without any activity subject to 12% VAT or exempt transaction, and as such, all its input taxes are necessarily attributable to its zero-rated sales; and, *second*, in view of the ruling in *Euro-Philippines*, invalid zero-rated sales cannot be treated as subject to 12% VAT.

We do not agree.

---

[15] G.R. No. 231581, 10 April 2019.

As to the first main argument, the Court emphasizes that in computing petitioner's entitlement to the refund, it did not allocate between zero-rated, subject to 12% VAT and exempt sales. Rather, the Court only determined which zero-rated sales are valid pursuant to existing laws and regulations.

In addition, petitioner's invocation of the ruling in *Euro-Philippines* is misplaced.

In *Euro-Philippines*, which is an assessment case (and not a claim for refund) where the taxpayer was assessed 12% VAT on its supposedly zero-rated sales for its alleged failure to present proof of compliance with the invoicing requirements, particularly, on the imprinting of the words "zero-rated" in its receipts, the Supreme Court merely declared that "failure to comply with invoicing requirements as mandated by law does not deem the transaction subject to 12% VAT". In other words, non-compliance with the invoicing requirements for a zero-rated transaction will not render the same subject to 12% VAT.

On the contrary, in *Commissioner of Internal Revenue v. Filminera Resources Corporation*[16] (**Filminera**) which involves a claim for refund under the VAT system, the Supreme Court was categorical in declaring that the taxpayer must not only prove the existence of zero-rated sales but must also prove that the zero-rated sales were issued valid invoice or official receipts, to wit:

> ...
> ...However, to be entitled for the refund or tax credit, **the taxpayer must not only prove the existence of zero-rated sales, but must also prove that the zero-rated sales were issued valid invoice or official receipts** pursuant to Sections 113 (A) and (B), and 237 of the 1997 NIRC, in relation to Section 4.113-1(B) of RR No. 16-2005. In Revenue Memorandum Circular No. 42-2003, **the BIR clarified that if the claim for refund or tax credit is based on the existence of zero-rated sales by the taxpayer but it fails to comply with the invoicing requirements in the issuance of sales invoices**, *e.g.* the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt, **the claim for refund or tax credit shall be denied.**
> ...

[16] G.R. No. 236325, 16 September 2020; Citations omitted and emphasis supplied.

Thus, harmonizing *Euro-Philippines* and *Filminera*, it can be deduced that non-compliance with invoicing requirements will not render the supposedly zero-rated transaction to 12% VAT; on the other hand, the same defect, although will not result in a deficiency VAT assessment, will nevertheless result in the denial of claim for refund or tax credit.

In the same manner herein, the Court, by computing the valid zero-rated sales' proportion to the total zero-rated sales, did not make an assessment against petitioner. Rather, the Court only determined the ratio to be applied to excess input tax (likewise found to be valid) in order to calculate the refundable amount due to petitioner.

As such, the Court appropriately considered and disallowed as zero-rated its unreported sales, those outside the period of the subject claim and those which failed to comply with the offsetting arrangement substantiation.

Furthermore, petitioner's suggestion that *Northwind* was already abandoned by *Euro-Philippines* is clearly devoid of merit.[17] As explained above, the mere consequence of *Euro-Philippines* is that a defect in the substantiation of zero-rated sale will not result to the same being subject to 12% VAT. On the other hand, in *Northwind*, the Supreme Court found no error in the Court *En Banc*'s decision to use the proportion of *valid* zero-rated sales from the *reported* zero-rated sales.

As succinctly held in *Northwind*, "there is no plausible reason why petitioner should be entitled to a refund of the substantiated input VAT without allocating its reported zero-rated sales to sales per official receipts because the substantiated input VAT covers the entire zero-rated sales, both reported and unreported sales for the quarter".

As to petitioner's imputation on error in disposing the issue on offsetting arrangement, the Court highlights the fact that aside from the Schedule of Offsetting[18] and Intercompany Journal Entries for

---

[17] As it was in fact affirmed by the Supreme Court in a Resolution dated 10 January 2018 in G.R. Nos. 218763-64, for which, an Entry of Judgment has already been issued dated 15 February 2018.

[18] Exhibit "P-16-28", USB (Exhibit "P-22").

Offsetting,[19] no other documents, which should be those mentioned in Q8/A8[20] of RMC No. 42-2003[21], were presented in evidence.

With respect to the disallowance of input tax relative to the WVAT, Section 4.114-2[22] of Revenue Regulations No. 16-2005[23], as amended, is clear that the same may be claimed as input tax credit in the month such WVAT is withheld and remitted to the BIR supported by BIR Form No. 1600.

Lastly, as to petitioner's argument that since respondent allegedly failed to give sufficient factual and legal reasons for the denial of the amount of ₱11,376,078.36, the denial must be rendered invalid and consequently, the claim for refund must be deemed fully granted, is clearly untenable.

---

19 Exhibit "P-16-29", id.

20 Q-8: With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular NO. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?

A-8: In the case of offsetting arrangements, the following documents should be required:
a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
d. Documents or correspondence regarding offsetting arrangements;
e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
f. Documents to prove actual export of goods;
g. Documents to prove that the sales are zero-rated sales.

21 Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters.

22 **SEC. 4.114-2.** *Withholding of VAT on Government Money Payments and Payments to Non-Residents. —*

...

VAT withheld and paid for the non-resident recipient (remitted using BIR Form No. 1600), which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, may be claimed as input tax by said VAT-registered withholding agent upon filing his own VAT Return, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT.

...

23 Consolidated Value-Added Tax Regulations of 2005.

In *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[24] (**Total Gas**), the Supreme Court ruled that cases filed in the CTA are litigated *de novo*, thus, petitioner should prove every minute aspect of its case, *viz*:

> ...
>
> At this stage, a review of the nature of a judicial claim before the CTA is in order. In *Atlas Consolidated Mining and Development Corporation v. CIR*, it was ruled —
>
>> . . . First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency *a quo* did not have any reason to deny its claims. <u>In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit</u>. Second, cases filed in the CTA are litigated *de novo*. Thus, a petitioner should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include whatever is required for the successful prosecution of an administrative claim.
>
> ...

RESPONDENT'S MOTION FOR
PARTIAL RECONSIDERATION

In the MPR, respondent argued that petitioner's big-ticket purchases were not properly substantiated, as required by RMO No. 16-2007.[25]

---

24 G.R. No. 207112, 08 December 2015; Citation omitted and italics and underscoring in the original text.

25 Supra at note 14.

We do not agree.

In *Commissioner of Internal Revenue v. CE Casecnan Water and Energy Company, Inc.*[26], this Court ruled that:

> ...
>
> Moreover, the law does not recognize the documents listed in Revenue Memorandum Order ("RMO") No. 53-98, as amended by RMO No. 16-2007 as supporting documents required from claimants seeking refund of excess or unutilized input taxes attributable to zero-rated sales as declared by this Court in the case of *Commissioner of Internal Revenue v. Visayas Geothermal Power Company* which ruled that:
>
> > Otherwise stated, a taxpayer seeking for a refund or the issuance of a tax credit certificate of unutilized input VAT payments directly attributable to zero-rated or effectively zero-rated sales must satisfy the following requisites:
> >
> > 1. There must be zero-rated or effectively zero-rated sales;
> > 2. The input taxes were incurred or paid;
> > 3. Such input VAT payments are directly attributable to zero-rated or effectively zero-rated sales;
> > 4. The input VAT payments were not applied against any output VAT liability; and
> > 5. The claim for refund or tax credit was filed within the two year prescriptive period.
> >
> > Indubitably, the law does not require the taxpayer to submit the documents prescribed by RMO 53-98 and the VAT registration requirements under Revenue Regulations ("R.R.") 6-97, in relation to Section 4.107-1 (a) of R.R. 7-95, and Section 236 of the 1997 NIRC, as amended, as a pre-condition to the claim for refund of unutilized input VAT payments.
>
> ...

Moreover, in resolving a similar argument posed herein by respondent as regards the requirement of RMO No. 53-98 (which was amended by RMO No. 16-2007 being invoked by respondent), the Supreme Court held in *Total Gas* that:

[26] CTA EB No. 1072, 28 April 2014; Citation omitted.

> ...
>
> Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court.
>
> ...

With respect to respondent's other contention that APL cannot be considered as not doing business in the Philippines inasmuch as petitioner is merely an extension of APL's personality here in the Philippines, the same has already been sufficiently passed upon in the assailed Decision.

To reiterate, the Services Agreement[27] shows no indication that petitioner is continuing the body or substance of APL's software development activities and that the latter performs acts or exercises of some of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization. As noted therein, the services rendered by petitioner are limited to administrative and support services.

Verily, the fact that petitioner and APL are related parties is not sufficient to prove that APL is doing business in the Philippines. It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.[28]

In sum, the Court finds no sufficient reason to disturb the assailed Decision.

---

[27] Exhibit "P-18", Division Docket, Volume I, pp. 364-371.

[28] *Alberto S. Sunio, et al. v. National Labor Relations Commission, et al.*, G.R. No. L-57767, 31 January 1984.

WHEREFORE, with the foregoing, Atlassian Philippines, Inc.'s Motion for Reconsideration filed on 02 November 2021 and Commissioner of Internal Revenue's Motion for Partial Reconsideration filed on 02 November 2021 are both **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LANEE S. CUI-DAVID
Associate Justice