REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

FOUNDEVER PHILIPPINES CORPORATION (Formerly: SITEL PHILIPPINES CORPORATION),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2799
(CTA Case No. 10136)

Present:

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

Promulgated:
NOV 25 2025 1:38 p.m.

x - x

RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Foundever Philippines Corporation's (**petitioner**'s/**Foundever**'s) "Motion for Partial Reconsideration (Re: Decision dated April 11, 2025)"[1] (**MPR**), filed on 29 April 2025, with respondent Commissioner of Internal Revenue's (**respondent**'s/**CIR**'s) "Opposition (Re: Motion for Reconsideration of the Decision dated [11 April] 2025)"[2] (**Comment**) filed on 02 June 2025.

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[1] *Rollo*, pp. 252-275.
[2] Id., pp. 281-290.

Petitioner seeks partial reconsideration of the Court *En Banc*'s Decision promulgated on 11 April 2025[3] (**assailed Decision**) in the above-captioned case. The assailed Decision denied the Petition for Review[4] for lack of merit.

In the assailed Decision, the Court *En Banc* upheld the Special Third Division's finding that petitioner was not entitled to a refund of ₱2,822,622.75 which pertains to its unutilized input value-added tax (**VAT**) arising from its domestic purchases of goods other than capital goods, services, and capital goods exceeding ₱1 Million attributable to its alleged zero-rated transactions for the first (1st) quarter of calendar year (**CY**) 2017 for failing to sufficiently establish that its sale of services for the claim period were zero-rated.

In the instant MPR[5], petitioner maintains that the Court *En Banc* erred in holding that it failed to establish the *situs* of its zero-rated sales. Petitioner, first, submits that it is illogical for petitioner to disregard its PEZA registration and claim that it was rendered by a non-PEZA registered entity when any purchases by a PEZA-registered entity is already zero-rated. It further argues that PEZA registration is a form of exemption and failure to show registration with PEZA should automatically deem the sales to have been rendered by a non-PEZA registered entity. It insists that it had adduced sufficient documentary and testimonial evidence showing that the services rendered to its non-resident foreign affiliates were performed at its Palawan Site, a non-PEZA registered entity, and therefore within the ambit of 0% VAT regime. Petitioner further underscores that the Bureau of Internal Revenue's (**BIR**'s) Denial Letter[6] and the Independent Certified Public Accountant (**ICPA**) Report[7], both official records cloaked with the presumption of regularity, categorically affirmed that the subject sales were realized from its Palawan Site. These, taken together, it argues, are competent pieces of evidence that ought to have settled the question of *situs* in its favor.

3 Id., pp. 149-189.
4 Id., pp. 39-61.
5 Supra at note 1.
6 Exhibit "P-27", Division Docket, Volume III, pp. 1034-1035.
7 Exhibit "P-40", id., Volume II, pp. 541-576.

Petitioner likewise argues that its witness, Ronald Portula (**Portula**), whose duties as Senior Tax Analyst included the preparation and safekeeping of financial and tax records, as well as the very application for refund subject of this case, is competent to testify about the *situs* of its alleged zero-rated sales. His testimony, petitioner claims, is far from hearsay, and even if otherwise, falls squarely under the recognized exceptions to the hearsay rule (*i.e.*, these are entries in the course of business). Moreover, petitioner avers that its Palawan Site was already operational by the third (3rd) quarter of 2016, as established by a duly notarized "Management Representation"[8], which enjoys the presumption of authenticity and due execution, and to which respondent interposed no objection. In any event, petitioner submits that even assuming that the pieces of evidence it offered were inconclusive as to the point that the services subject of the sale were performed exclusively at petitioner's Palawan Site, it is nevertheless conclusive as to the point that none of the aforementioned services were performed by petitioner in any of its PEZA-registered sites.

Respondent, in opposing petitioner's MPR, echoes the assailed Decision and argues that petitioner failed to prove with reasonable certainty that the services were rendered within petitioner's Palawan Site, thus petitioner failed to prove that its sales were indeed zero-rated. Respondent reiterates that since VAT refunds partake the nature of exemption from taxation, the pieces of evidence must be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

We resolve.

In support of its MPR, petitioner raises the following arguments: (1) it is illogical for it to disregard its PEZA registration and claim that its purchases are not zero-rated; (2) it adduced sufficient evidence to establish that the services were rendered at its Palawan Site; (3) the BIR's Denial Letter and the ICPA Report are competent evidence of *situs*; (4) its witness, Portula, is competent to testify on the *situs* of the sales; and (5) the notarized "Management Representation" proves the operational status of the Palawan Site.

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8 Exhibit "P-52-4", USB.

We will address the foregoing in *seriatim*.

Firstly, the Supreme Court has clarified that PEZA-registered enterprises are not *ipso facto* subject to 0% VAT.[9] The VAT treatment depends on whether the Cross-Border Doctrine applies, *i.e.*, whether the goods or services are consumed within the ECOZONE.[10] The decisive consideration is ***not* the mere fact of PEZA registration**, but whether the transaction falls within the ambit of the Cross-Border Doctrine. Under this doctrine, only goods and services destined for consumption within the ECOZONE may be accorded VAT zero-rated treatment. Conversely, purchases or services rendered and consumed outside the ECOZONE are subject to 12% VAT. The statutory premise is plain: a PEZA-registered entity must establish that its purchases qualify as zero-rated under both law and jurisprudence. Thus, petitioner's reasoning falters, for it erroneously assumes that PEZA registration *ipso facto* transmutes all of its purchases into zero-rated transactions. It is therefore neither illogical, nor inconsistent with Philippine VAT system, to subject certain purchases of a PEZA-registered entity to 12% VAT if the same are consumed outside the ECOZONE. This is but the natural consequence of the principle that VAT attaches to domestic consumption and the ECOZONE enjoys a tax and customs regime separate and distinct from the customs territory of the Philippines. At the risk of being repetitive, registration alone is not a magic wand that will automatically convert all purchases into zero-rated transactions.

Secondly, notwithstanding that the BIR's Denial Letter and ICPA Report purportedly mention that the services were rendered at the Palawan Site, the same does not relieve petitioner of its burden. It remains incumbent upon petitioner to demonstrate, to the Court's satisfaction, compliance with the documentary and evidentiary requirements for an administrative claim for a refund or tax credit. For one, petitioner squarely placed in issue the actual place of performance of its services, as is evident from its petition[11], Pre-Trial Brief[12], Formal Offer of Evidence (**FOE**)[13] and Memorandum.[14]

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9 See *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 251333-34, 05 March 2025.
10 Id.
11 Division Docket, Volume I, pp. 24-26.
12 Id., p. 435.
13 Id., Volume II, p. 732.
14 Id., Volume III, pp. 1179.

Additionally, it bears stressing that this Court is not bound by the findings of the court-commissioned ICPA. The ICPA Report is but a tool or guide to aid the Court in the resolution of the case.[15] It is only persuasive in nature and not conclusive upon the Court. Furthermore, although one of the stated audit objectives of ICPA Madonna Mia S. Dayego (**Dayego**) was "[t]o ascertain that the zero-rated sales of services of [p]etitioner [were] rendered within its Palawan Facility", her findings reveal no categorical conclusion that the services were, in fact, performed exclusively within said site. What is telling is that ICPA Dayego merely described the subject collections as "attributable" to the Palawan Site. To *attribute* is to explain something by indicating a cause or simply caused by[16], it denotes that the collections arose from or were linked to the Palawan Site. However, attribution does not equate to actual rendition. Thus, when ICPA Dayego referred to the collections as "attributable" to the Palawan Site, this could only mean that the revenues were associated with it, but not that the underlying services were rendered therein.

Thirdly, the Court underscores that for testimony to be accorded probative value, the witness must have personal knowledge of the facts in issue.[17] The distinction between lack of personal knowledge and hearsay is crucial: hearsay refers to a statement other than one made by the declarant while testifying at a trial or hearing, offered to prove the truth of the facts asserted therein[18], while lack of personal knowledge pertains to the witness' inability to testify on matters not perceived by his or her own senses.[19] In this case, Portula's testimony was not appreciated because he lacked personal knowledge of the actual performance of services at the Palawan Site as required under Section 22[20], Rule 130 of the Rules of Court (**ROC**), as amended, that is separate and distinct from hearsay under Section 37[21], Rule 130 of the ROC, as amended. His role as preparer and custodian of records does not, by itself, confer upon him the requisite personal knowledge of the *situs* of actual performance. Simply stated, Portula's testimony regarding the

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15 See *Tullett Prebon (Philippines Inc.) v. Commissioner of Internal Revenue*, G.R. No. 257219 (Formerly UDK No. 16941), 15 July 2024.

16 *Commission of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 253003, 24 January 2024.

17 Rules of Court, Rule 130, Section 22; see *Country Bankers Insurance Corporation v. Lianga Bay & Community Multi-Purpose Cooperative, Inc.*, G.R. No. 136914, 25 January 2002.

18 Rules of Court, Rule 130, Section 37.

19 See *Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc.*, G.R. No. 136914, 25 January 2002.

20 SEC. 22. *Testimony confined to personal knowledge.*

21 SEC. 37. *Hearsay.*

place of actual performance could not be appreciated due to his lack of personal knowledge and being such could not be excepted by the rule on 'records of regularly conducted business'.

Even assuming *arguendo*, OR No. 000281[22] qualifies as an exception to the hearsay rule under the rule on 'records of regularly conducted business', the indication of "PALAWAN-61IN-145-2017" is not sufficient. For one, such notation does not indicate that the services were actually rendered in Palawan. More so, it fails to identify with particularity the precise locality within Palawan, *i.e.*, Puerto Princesa City. To reiterate, an official receipt, at most, serves merely as evidence of payment and does not, in any manner, provide an indication as to where the services were performed.[23]

Fourthly, the operational status of the Palawan Site does not, by itself, prove that the services were actually performed there. The critical issue is not merely whether the site was operational, but whether the services for which zero-rating is claimed were rendered at that site.

Lastly, the law requires positive proof of the *situs* of service, not merely the absence of evidence to the contrary. The taxpayer who claims that its sales were zero-rated and thus entitled to a refund lies the *onus probandi*. The one who asserts must prove. Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer.[24] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven. Petitioner cannot anchor its position on the bare absence of evidence showing the sales were rendered by PEZA-registered sites. The lack of such proof does not, by necessary implication, establish that the sales were in fact rendered by a non-PEZA registered entity.

Accordingly, after a judicious and thorough evaluation of the parties' arguments and the applicable law and jurisprudence, the Court *En Banc* finds no cogent reason to disturb the assailed Decision.

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22 Exhibit "P-16", Division Docket, Volume III, p. 1098.

23 See Revenue Memorandum Order (**RMO**) No. 16-2003, 20 May 2003; See *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 181858, 24 November 2010.

24 *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, G.R. No. 179961, 31 January 2011.

The issues raised in petitioner's MPR have been fully and sufficiently addressed, and no substantial argument has been presented to warrant a reversal or modification. Thus, the Court *En Banc* finds it proper to uphold its prior ruling in all respects.

WHEREFORE, in view of the foregoing, petitioner Foundever Philippines Corporation's "Motion for Partial Reconsideration (Re: Decision dated April 11, 2025)", filed on 29 April 2025, is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice