REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-*versus*-

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD.,
Respondent.

CTA *EB* NO. 2534
(CTA Case No. 9895)

x- x

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2554
(CTA Case No. 9895)

Present:

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

Promulgated:

JAN 09 2024 4:20 pm

x- x

RESOLUTION

MANAHAN, *J.*:

For resolution are the following:

1. *Motion for Partial Reconsideration (of the Decision promulgated on June 7, 2023)*[1] filed by Maersk

[1] EB Docket, pp. 178-192.

Global Services Centres (Philippines) Ltd. (Maersk) on June 23, 2023; without comment from the Commissioner of Internal Revenue (CIR), per Records Verification dated September 12, 2023; and

2. *Motion for Reconsideration (Re: Decision promulgated on 7 June 2023)*[2] filed by the CIR on June 26, 2023, with Maersk's *Comment (on the Motion for Reconsideration dated June 26, 2023)*[3] filed on August 22, 2023.

The parties are assailing the June 7, 2023 Decision of the Court of Tax Appeals (CTA) En Banc, the disposition of which states:

> **WHEREFORE**, considering that the required affirmative votes of five (5) members of the Court *En Banc* was not obtained in the instant case, the Petitions for Review, filed by the CIR and Maersk, docketed as CTA EB Nos. 2534 and 2554, respectively are **DENIED**.
>
> Accordingly, the Decision and Resolution, dated January 28, 2021 and September 20, 2021, respectively, by the CTA 3rd Division in CTA Case No. 9895 are deemed **AFFIRMED**.
>
> **SO ORDERED.**[4]

To recall, the CTA 3rd Division partially granted Maersk's claim for refund/issuance of a tax credit certificate (TCC), as follows:

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent [CIR] is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner [Maersk] in the amount of Php32,523,828.33, representing excess or unutilized excess input VAT attributable to its zero-rated sales for the four quarters of CY 2016.
>
> **SO ORDERED.**[5]

---

[2] EB Docket, pp. 193-208.
[3] EB Docket, pp. 212-220.
[4] EB Docket, p. 134.
[5] EB Docket, pp. 46-47.

In its *Motion*, Maersk states that the CTA *En Banc* failed to address its assignment of error that the CTA 3rd Division erred in disallowing the VAT zero-rating of sales to its client, Maersk Line A/S (ML), on the ground that such sales were supported by official receipts that bore alterations on the customer's name – from "A.P. Moller A/S" to "Maersk Line A/S" – however, the counter-signature is not the same signature appearing in the space provided for the authorized signature.

Maersk argues that the "corrections" of the said ORs were to reflect the truth that the amounts stated therein were received from ML. Even if the "corrections" are not allowed, Maersk argues that its sales to "A.P. Moller A/S" should still be considered zero-rated sales.

On the other hand, the CIR, in his *Motion*, states that the CTA 3rd Division should have dismissed the original petition for review for Maersk's failure to substantiate its claim for refund. The CIR further asserts that since he rendered a decision in the administrative level, the CTA's jurisdiction becomes strictly appellate in nature.

The *Motions* are denied.

The Court finds no compelling reason to disturb the findings of the CTA 3rd Division with respect to the disallowance of certain sales with altered official receipts. The Court found that the alterations in the customer's names in the official receipts covered by Exhibits "P-56", "P-61", and "P-64", invalidated the same for VAT zero-rating purposes, as follows:

> The alterations made in these VAT ORs resulted in the same being invalidated for VAT zero-rating purposes. These VAT ORs are considered tampered since no proof was adduced showing that the signatories beside the alterations were authorized to perform such. Consequently, petitioner [Maersk] cannot claim the total amount of USD42,236,116.47 (or the equivalent of Php2,011,153,601.06) as VAT zero-rated sales. The amount pertaining to the tampered VAT ORs should be deducted. As such, only the amount of Php1,881,498,253.07 qualifies as petitioner [Maersk]'s VAT zero-rated sales to Maersk Line A/S.[6]

[6] EB Docket, Division Decision dated January 28, 2021, p. 38.

In the Resolution dated September 20, 2021, the CTA 3rd Division reiterated:

> In the case at bar, there is no denying that petitioner [Maersk] indeed had zero-rated sales of services to its client, ML, who was found to be an entity engaged in international shipping. However, entitlement is one mater, while compliance with the documentary and evidentiary requirements is another. The documentary evidence required to prove that a taxpayer-claimant had zero-rated sales is the VAT invoice or VAT official receipt it issued in relation to such zero-rated sales. As duly found by this Court, petitioner [Maersk]'s VAT official receipts in the total amount of One Hundred Twenty Nine Million Six Hundred Fifty Five Thousand Three Hundred Forty Seven and 99/100 Pesos (Php129,655,347.99) were tampered as these contained unauthorized alterations (*i.e.* there was no proof that the signatures beside the alterations were from the requisite authorized signatory). VAT invoices or official receipts which have been tampered, or those which contained alterations or insertions without being countersigned by the authorized signatory, cannot substantiate the transactions they purport to represent. Being tampered, these VAT official receipts do not qualify as documentary proof of the alleged VAT zero-rated sales made to ML. In fact, as they were tampered, they cannot be given any evidentiary value at all. xxx[7]

Indeed, Maersk has not shown any proof showing the authority of the signatories who countersigned the alterations in the subject ORs. There is likewise no merit to Maersk's argument that the altered ORs should be considered for VAT zero-rating purposes considering that the alleged unaltered customer's name pertains to A.P. Moller-Maersk A/S, and that sales to said customer have been previously considered zero-rated in a different case. In all, the disallowance of said sales from VAT zero-rating was proper.

We likewise find no merit in the CIR's argument. While it is true that the Court exercises appellate jurisdiction on the CIR's decision over the claim for refund, respondent Maersk in CTA EB No. 2534 is still required to show that it is entitled under the substantive laws to the grant of its refund claims. It is reiterated that cases before the CTA are litigated *de novo*, and the Court is not precluded from accepting evidence even if not presented at the administrative level.[8]

---

[7] EB Docket, Division Resolution dated September 20, 2021, p. 51.

[8] See *Commissioner of Internal Revenue v. Philippine National Bank*, G.R. No. 180290, September 29, 2014.

Despite the foregoing, We reiterate that Maersk's judicial claim was belatedly filed on July 27, 2018, thereby divesting the CTA of jurisdiction.

Section 112(C) of the 1997 National Internal Revenue Code (NIRC), as amended by the TRAIN Law,[9] prescribes the period for filing a judicial claim for the refund or tax credit of alleged excess or unutilized input VAT, as follows: (i) the period of ninety (90) days which serves as a period for the CIR to act on the administrative claim for refund or credit; and (ii) the thirty (30)-day period within which the taxpayer may file its judicial claim with the CTA.

In *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*[10] and *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*,[11] the Supreme Court reminded the taxpayers that the 30-day period to appeal always applies, whether there is denial or inaction on the part of the CIR. Further, when the 120-day [now 90-day] period lapses and there is inaction on the part of the CIR, they must no longer wait for the CIR to come up with a decision thereafter. The CIR's inaction is the decision itself.[12]

Thus, from the filing of Maersk's administrative claim on March 27, 2018, the CIR had ninety (90) days or until June 25, 2018, to act on the said claim. In case of inaction within the said 90-day period, Maersk has thirty (30) days from such expiration to file its judicial claim, or until July 25, 2018. Unfortunately, the Petition for Review before the CTA was filed only July 27, 2018, or beyond the prescribed period.

In the present case, while there is a letter-denial dated June 13, 2018, the same was received by Maersk only on July 26, 2018, which was already beyond the 90+30-day period, which ended on July 25, 2018.

It is reiterated that the "judicial claim should be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the [90-day] period,

---

[9] Republic Act No. 10963 or the Tax Reform for Acceleration and Inclusion Law.
[10] G.R. No. 173241, March 25, 2015.
[11] G.R. No. 168950, January 14, 2015, see also *Lapanday Foods Corporation v. Commissioner of Internal Revenue*, G.R. No. 252821, September 2, 2020.
[12] *Id.*

whichever is sooner."[13] Maersk's receipt of the letter-denial on July 26, 2018, which was already beyond the 90+30-day period, does not alter the jurisdictional period within which to appeal to the CTA due to inaction, which ended on July 25, 2018.

Clearly, the CTA 3rd Division had no jurisdiction over the judicial claim.

WHEREFORE, the *Motion for Motion for Partial Reconsideration (of the Decision promulgated on June 7, 2023)* and the *Motion for Reconsideration (Re: Decision promulgated on 7 June 2023)*, filed by Maersk and the CIR, respectively, are **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With due respect, I reiterate my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I maintain my D.O.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[13] *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 182737, March 2, 2016.

(I maintain my concurrence with Justice Villena's D.O.)
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
I reiterate my Concurring Opinion.
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(With due respect, I maintain my concurrence with Justice Villena's D.O.)
LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice