REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

ASURION HONG KONG LIMITED-ROHQ,
Respondent.

CTA EB NO. 2257
(CTA Case No. 9518)

Present:
DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 2 3 2021 11:20 am

x- x

DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] ("Assailed Decision") dated October 02, 2019 and Resolution[2] ("Assailed Resolution") dated February 24, 2020 of the Court of Tax Appeals Second Division ("Second Division"), partially granting Petitioner's claim for refund or issuance of a Tax Credit Certificate ("TCC") amounting to Php4,065,163.03, representing its excess and unutilized input value-added tax ("VAT") attributable to its zero-rated sales for the period of September 01, 2014 to December 31, 2014.

---

[1] Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr. and Jean Marie A. Bacorro-Villena concurring. Docket, pp. 790-812.

[2] *Id.*, pp. 852-856.

The Parties

Petitioner is the duly appointed Commissioner of Internal Revenue (CIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of the Office, including *inter alia*, the duty to act upon and approve claims for refund of tax credit pursuant to the provisions of the National Internal Revenue Code ("NIRC") of 1997, as amended, and other tax laws, rules and regulations.[3]

Respondent Asurion Hong Kong Limited — ROHQ is the Philippine Branch of a multinational company organized and existing under the laws of Hong Kong. As such, petitioner is licensed by the Securities and Exchange Commission ("SEC") to transact business in the Philippines as a regional operating headquarters (ROHQ) under SEC Registration No. FS201413422 dated July 17, 2017.[4]

The Facts

The facts as found by the Second Division are as follows:

> "[Respondent] is registered with the Bureau of Internal Revenue (BIR) as a VAT taxpayer with Taxpayer Identification No. (TIN) 008-817-591-000.
>
> [Respondent] rendered services in the Philippines to (i) Asurion Insurance Services, Inc. (AISI), a corporation duly established and doing business under the laws of Nashville, Tennessee, United States of America (USA), and (ii) Acyan Corporation (AC), a corporation organized and existing under the laws of Japan.
>
> AISI and AC conduct their business outside the Philippines.
>
> [Respondent] filed with the BIR its Original and Amended Quarterly VAT Returns (BIR Form No. 2550-Q) for the 3rd and 4th quarters of CY 2014 on the following dates:

VAT Return	Date of Filing
Original VAT Return for the 3rd Quarter	October 20, 2014
Amended VAT Return for the 3rd Quarter	September 12, 2016

---

3 *Id.*, Decision, p. 791.
4 *Id.*, pp. 790-791.

Original VAT Return for the 4th Quarter	January 23, 2015
Amended VAT Return for the 4th Quarter	September 25, 2016

On September 30, 2016, [Respondent] filed with the BIR, Revenue District Office (RDO) No. 44 an administrative claim for the refund of and/or the issuance of TCC for its unutilized input VAT for the period from 3rd and 4th quarters of CY 2014 amounting to [Php]13,552,292.30.

On October 12, 2016, [Respondent] received Letter of Authority (LOA) No. AUDM04/008044/2016 (eLA201200036933) dated October 12, 2016 for the examination of [Respondent's] books of accounts and other accounting records for VAT for the 3rd and 4th quarters of CY 2014.

On December 14, 2016, [Respondent] received a letter signed by Ms. Bethsheba R. Bautista, the Revenue District Officer of BIR, RDO No. 44, stating that the [Respondent's] administrative claim for refund of excess input taxes for 3rd and 4th quarters of CY 2014 is denied.

Hence, [Respondent] filed a Petition for Review with the Court of Tax Appeals (CTA) on January 12, 2017."[5]

The Ruling of the Second Division

On October 02, 2019, the Second Division promulgated the Assailed Decision partially granting the Petition for Review, the dispositive portion of which reads:

"**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent should be **ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE** in favor of [Respondent] in the amount of [Php]4,065,163.03 representing unutilized input VAT attributable to its zero-rated sales for the period of September 1, 2014 to December 31, 2014.

SO ORDERED."[6]

[5] *Id.*, pp. 791-792.
[6] *Id.*, pp. 810-811.

Aggrieved, Petitioner filed *via* a registered mail a "Motion for Partial Reconsideration"[7] on October 18, 2019, which the Second Division denied in the Assailed Resolution on February 24, 2020, to wit:

> "**WHEREFORE**, [Petitioner's] Motion for Partial Reconsideration is **DENIED** for lack of merit
>
> **SO ORDERED.**"[8]

The Proceedings in the Court of Tax Appeals En Banc

On March 06, 2020, Petitioner filed *via* registered mail a "Motion for Extension of Time to File Petition for Review"[9], praying for an extension of fifteen (15) days from March 19, 2020 or until April 03, 2020 within which to file his petition.

On June 01, 2020, a Minute Resolution[10] was issued granting Petitioner until July 01, 2020 within which to file his petition.

On June 11, 2020, Petitioner filed *via* registered mail the present "Petition for Review"[11].

On July 07, 2020, the Court issued a Resolution[12] which ordered Respondent to comment on the Petition for Review within ten (10) days from receipt.

On July 27, 2020, Respondent filed his "Comment (Re: Petitioner's Petitioner *[sic]* for Review dated June 11, 2020)"[13]. Thus, on September 15, 2020, a Resolution[14] was issued submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

---

7 *Id.*, pp. 822-828.
8 *Id.*, p. 856.
9 Rollo, pp. 1-6. Record shows that Petitioner received the Assailed Resolution on March 04, 2020; Docket, p. 851.
10 *Id.*, p. 5.
11 *Id.*, pp. 6-21.
12 *Id.*, pp. 60-61.
13 *Id.*, pp. 62-72.
14 *Id.*, pp. 79-80.

1. Respondent's sales of services that do not qualify to zero-rating should be subjected to twelve percent (12%) output VAT;

2. The determination of Respondent's output VAT liability is merely for the purpose of ascertaining Respondent's entitlement of its unutilized input VAT claim for refund and not for losing any deficiency tax; and

3. Respondent fell short of the invoicing requirements under Section 113 of the NIRC of 1997, as amended by Republic Act ("R.A.") No. 9337.[15]

The Arguments of Parties

Petitioner asserts that inasmuch as the Court in Division found that Respondent's sale of services amounting to Php9,487,129.27 pertain to those which do not qualify for zero-rating, the same should have been subjected to twelve percent (12%) VAT, and the resulting output VAT thereon should have been deducted from the amount of alleged unutilized input VAT being claimed for refund.

Moreover, Petitioner avers that Respondent failed to comply with the invoicing requirements under the law. Respondent's claimed input VAT must be disallowed because of the following reasons:

1) the VAT was not separately indicated in the supporting VAT official receipts/sales invoices;

2) the invoices/receipts do not have the quantity, unit cost and description of the goods or properties or nature of the service; and

3) the sales invoices/official receipts have no TIN and address of Respondent indicated.

On the other hand, Respondent points out that there were no disallowed zero-rated sales of services. There being no disallowed zero-rated sales, the court's power to determine corresponding output VAT liability for the purpose of ascertaining Respondent's entitlement to excess and unutilized input VAT for refund is inapplicable. Respondent also stresses that it has complied with the invoicing requirements under the law and relevant revenue regulations, and that it was able to sufficiently prove that it is entitled to a tax refund.

---

[15] *Id.*, pp. 10-14.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Partial Reconsideration", on February 04, 2020. Petitioner received said Resolution on March 04, 2020.[16] Pursuant to Rule 4, Section 2(a)(1)[17] in relation to Rule 8, Section 3(b)[18] of the Revised Rules of the Court of Tax Appeals[19] ("RRCTA"), Petitioner had fifteen (15) days from date of receipt of the resolution or until March 19, 2020 within which to file its petition for review.

On March 06, 2020, Petitioner filed *via* registered mail a "Motion for Extension of Time to File Petition for Review", praying for an extension of fifteen (15) days from March 19, 2020 or until April 03, 2020 within which to file his petition. On June 01, 2020, a Minute Resolution was issued granting Petitioner until July 01, 2020 within which to file his petition.

On June 11, 2020, Petitioner timely filed *via* registered mail the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

At the outset, Petitioner presents no new argument to persuade Us that it has a meritorious case. In fact, the grounds relied upon by Petitioner in the instant Petition for Review are the same contentions in Petitioner's "Motion for Partial Reconsideration" filed *via* registered mail on October 18, 2019 before the

---

[16] Docket, p.851.

[17] **Sec. 2.** *Cases within the jurisdiction of the Court en banc.* — The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

xxx xxx xxx

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture; x x x

[18] **Sec. 3.** *Who may appeal; period to file petition.* — x x x

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

[19] A.M. No. 05-11-07-CTA, November 22, 2005.

Second Division. They were already passed upon, addressed and resolved in the Assailed Decision and Assailed Resolution. Nevertheless, we will discuss, once again, the demerits of Petitioner's arguments which may serve as a guidepost in deciding issues of similar nature in the future.

Respondent has no VAT output liability for the period September 1, 2014 to December 31, 2014.

Essentially, Petitioner posits that Respondent has sale of services which do not qualify for zero-rating amounting to Php9,487,129.27. Accordingly, the said amount should have been subjected to twelve percent (12%) VAT, and deducted from the amount of alleged unutilized input VAT being claimed for refund

The court is not persuaded. Petitioner is mistaken for two reasons.

First, the amount of Php9,487,129.27 do not pertain to Respondent's sale of services which do not qualify for zero-rating, but refer to input VAT disallowed for Respondent's failure to meet the substantiation requirements under the law and revenue regulations.

The consequence of Respondent's failure to substantiate a portion of its input VAT incurred on its purchases of goods and services is that the refund for the input VAT corresponding to the disallowed expenses should be denied. This does not mean that an output VAT liability shall result therefrom.

And second, all of Petitioner's declared total zero-rated sales of Php149,271,326.81 for the period September 1, 2014 to December 31, 2014 were found by the Second Division as valid zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended.

We see no reason to deviate from the court *a quo*'s findings, which is a result of a thorough examination of documents submitted by Respondent.

Following the Second Division, there were no disallowed zero-rated sales of services. That being so, no amount should be subjected to twelve percent (12%) VAT.

The Second Division did not err in partially granting Respondent's claim for refund

or issuance of a TCC in the amount of Php4,065,163.03

Petitioner maintains that Respondent's claimed input VAT must be disallowed for failure to comply with the invoicing requirements under the law. And yet, Petitioner merely states the law and does not offer basis in fact. Instead, Petitioner's statements are in the nature of general assignments of error without any evidence to support such claim.

We cannot accept Petitioner's contentions without any substantiation to support the same.

Indeed, a review of the Assailed Decision shows that based on the supporting documents submitted, Respondent complied with the following requisites in order to be entitled to a refund or issuance of a TCC of excess input VAT attributable to zero-rated or effectively zero-rated sales:

1. The taxpayer-claimant must be VAT-registered;
2. There must be zero-rated or effectively zero-rated sales;
3. That input taxes were incurred or paid;
4. That such input taxes are attributable to zero-rated or effectively zero-rated sales;
5. That the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and
6. The claim for refund was filed within the prescriptive period both in administrative and judicial levels.

Respondent was able to prove that its excess and unutilized input VAT amounting to Php4,065,163.03 was wholly attributable to its zero-rated sales (which were all declared as valid zero-rated sales) for the period September 1, 2014 to December 31, 2014.

The Court *En Banc* echoes the Second Division's declaration on the matter:

> "In the present case, [Petitioner] failed to point out specifically the VAT invoices and official receipts which allegedly failed to comply with the invoicing requirements under the law. It should be accentuated that **the Court itself already examined and tediously scrutinized the documentary evidence presented by [Respondent].**
>
> xxx xxx xxx

Truly, this Court recognizes that the burden of proof to establish the right to refund is on the claimant taxpayer, and that being in the nature of a claim for exemption, refunds are construed in *strictissimi juris* against the entity claiming the refund and in favor of the taxing power. This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim. Hence, when the taxpayer is able to meet the requirements under the NIRC of 1997, as amended, and other pertinent tax laws and regulations, the taxpayer is considered to have discharged the burden of proving its entitlement to a refund or tax credit.

Evidently, in the present case, this Court found that [Respondent] has sufficiently proven its entitlement to a refund or tax credit in the reduced amount of [Php]4,065,163.03, representing unutilized input VAT attributable to its zero-rated sales for the 3rd and 4th quarters of CY 2014. Consequently, the grant of a refund or tax credit is proper and should be affirmed."[20]

Considering all these pronouncements, We find no cogent reason to reverse or modify the assailed Decision and assailed Resolution of the Court *a quo*.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. The Decision dated October 02, 2019 and the Resolution dated February 24, 2020 of the Second Division in the case docketed as CTA Case No. 9518 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

---

[20] *Emphasis supplied.*

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice