REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

AMADEUS MARKETING PHILIPPINES, INC.,	**CTA CASE NO. 9664**
Petitioner,	Members:
-versus-	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	FEB 22 2021 4:06 p.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review,[1] filed on 25 August 2017 pursuant to ***Section 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals ("RRCTA"),***[2] by Amadeus Marketing Philippines, Inc., asking the Court to grant its application for tax refund/credit in the total amount of ₱16,846,916.29, representing its alleged excess and unutilized input Value-Added Taxes ("VAT") for the 1st to 4th quarters of taxable year ("TY") 2015.

The Parties

Petitioner Amadeus Marketing Philippines, Inc. is a corporation duly registered under Philippine Laws with Securities and Exchange Commission ("SEC") Company Registration No. A1997-11194. It is a VAT-registered entity with Bureau of Internal Revenue ("BIR") Certificate of Registration No. OCN 9RC0000133815 and Taxpayer Identification No. 005-374-900-000. It holds office at 36th Floor, LKG Tower, 6801 Ayala Avenue, Makati City.

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[1] Petition for Review; Division Records, Vol. 1, pp. 10-58, with annexes.
[2] A.M. No. 05-11-07-CTA; 22 November 2005.

Petitioner is primarily engaged in the business of marketing an automated computerized reservations system, known as the "Amadeus Global Travel Distribution" ("Amadeus System") that incorporates a software package which performs various functions, such as real line airlines seat reservations, schedules booking for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing, and fare pricing displays in the Philippines.

Respondent Commissioner of Internal Revenue ("CIR") is the chief of the BIR who is vested by the National Internal Revenue Code of 1997, as amended (hereinafter referred to as "Tax Code") the authority to decide, approve, and grant tax refunds/credit claims. He may be served with summons and other court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On 31 March 2017, petitioner filed its Application for Tax Credits/Refunds (BIR Form No. 1914), with attached letter and supporting documents before the BIR Revenue District Office ("RDO") No. 50 requesting for the refund of its alleged excess/unutilized input VAT amounting to ₱16,846,916.29 incurred during the 1st to 4th Quarters of TY 2015.[3]

Alleging inaction on the part of respondent, petitioner filed the instant Petition for Review on 25 August 2017.[4]

Thereafter, respondent posted his Answer on 3 November 2017[5] interposing the following defenses:

(a) Petitioner failed to demonstrate that the VAT in this case, was erroneously or illegally collected;
(b) That the VAT are presumed paid and collected in accordance with pertinent laws and regulations, hence, not refundable;
(c) That it is incumbent upon petitioner to show that it has complied with the provision of Section 204(C) of the Tax Code;
(d) That the tax refund/credit claim is not fully substantiated with proper documents; and
(e) That this case, being a tax refund case, should be strictly construed against the taxpayer and in favor of the government.[6]

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[3] Application for Tax Credits/Refunds, Exhibit "P-41"; Division Records, Vol. 2, p. 954. Letter to BIR RDO No. 50, Exhibit "P-40"; Division Records, Vol. 2, pp. 946-953.
[4] Petition for Review; Division Records, Vol. 1, pp. 10-58, with annexes.
[5] Answer; Division Records, Vol. 1, pp. 68-72; Order; *id.*, p. 66.
[6] *See* Special and Affirmative Defenses, Answer, p. 2; *id.*, p. 69.

Respondent and petitioner filed their Pre-Trial Briefs on 1 February 2018[7] and 12 February 2018,[8] respectively. The Pre-Trial Conference took place on 15 February 2018.[9]

Afterwards, the parties filed their Joint Stipulation of Facts and Issues ("JSFI") on 2 March 2018.[10] Having done the same, the Court issued the Pre-Trial Order on 9 May 2018, marking the end of pre-trial.[11]

During trial, petitioner presented the following witnesses:

(a) Ms. Myra Luna Davalos ("Ms. Davalos") - Senior Finance Officer of petitioner;[12]

She testified that petitioner is engaged in rendering zero-rated services to non-resident foreign corporations, one of which is Amadeus IT Group SA ("Amadeus SA"). She narrated that, in the course of petitioner's business, it incurred input VAT during the 1st to 4th quarters of TY 2015 which remained unutilized to this date. She also identified documents relevant to petitioner's sales of services to Amadeus SA.

(b) Ms. Krizel Sansano ("Ms. Sansano") –Finance Supervisor of petitioner; [13]

She reiterated the testimony of Ms. Davalos. In addition, she testified that petitioner is registered with the SEC and the BIR as a VAT Taxpayer. She explained petitioner's basis in categorizing Amadeus SA as a non-resident foreign corporation and the processes it undertook in filing its administrative claim with the BIR. Likewise, she identified documents relevant to her testimony.

(c) Mr. Enrico T. Pizarro – the Court-commissioned Independent Certified Public Accountant ("ICPA").[14]

He discussed his observations and findings in relation to his examination of petitioner's supporting documents and identified documents he inspected in relation to this case.

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7 Respondent's Pre-Trial Brief; *id.*, pp. 75-80.
8 Petitioner's Pre-Trial Brief; *id.*, pp. 83-95.
9 Minutes of Hearing; Division Records, Vol. 1, p. 97-100; Order; *id.*, p. 102-104.
10 JSFI; *id.*, pp. 107-115.
11 Pre-Trial Order; *id.*, pp. 371-386.
12 Judicial Affidavit of Ms. Myra Luna Davalos, Exhibit "P-92"; *id.*, pp. 148-158.
13 Judicial Affidavit of Ms. Krizel Sansano, Exhibit "P-91"; *id.*, pp. 204-218.
14 Judicial Affidavit of Mr. Enrico T. Pizarro, Exhibit "P-151"; Division Records, Vol. 2, pp. 671-691.

Thereafter, petitioner filed its Formal Offer of Evidence on 15 February 2019.[15]

In a Resolution, dated 29 March 2019, the Court resolved to admit petitioner's offered exhibits, except for Exhibits "P-110.11", "P-111.1", "P-121.88", "P-121.278", "P-121.330", "P-121.413", "P-122.8", "P-128.133", "P-128.211", "P-128.224", "P-128.236", "P-128.269", "P-128.337", "P-128.346", "P-128.748" "P-128.849", "P-128.1236", "P-128.1745", "P-128.1960", "P-128.1961", "P-128.2119", "P-128.2139", "P-128.2143", "P-128.2271", "P-128.2299", "P-133.5", "P-133.17", "P-133.63", "P-133.72", "P-133.119", "P-133.202", "P-134.32", "P-134.33", "P-134.34", "P-137.14", "P-137.17", "P-137.20", "P-137.96", "P-137.134", "P-137.155", "P-138.6", "P-138.270", and "P-138.297" for not being found in the case records; and Exhibit "P-127" for failure of the exhibit offered to correspond with the document pre-marked by the ICPA.[16]

The aforementioned denied exhibits represent petitioner's issued official receipts and other supporting documents relevant to its claim for refund.

Aggrieved, petitioner posted its Motion for Reconsideration on 22 April 2019.[17] It prayed for the Court to reconsider the admission of its denied exhibits into evidence. Likewise, it requested for a setting of a commissioner's hearing to correct the erroneous and double markings made by the ICPA.

On 17 June 2019, the Court issued a Resolution directing the ICPA to submit the scanned copies of the corrected version of the marked documents that were previously denied by the Court in its 29 March 2019 Resolution.[18] The ICPA filed his Compliance on 16 July 2019.[19]

On 20 August 2019, the Court issued a Resolution granting petitioner's Motion for Reconsideration. The Court admitted petitioner's Exhibits "P-110.11", "P-111.1", "P-127", "P-128.133", "P-128.236", "P-128.747", "P-128.849", and "P-128.1236" into evidence.[20]

On 7 November 2019, respondent manifested in open court that he will not be presenting evidence in this case.[21] Hence, the Court ordered the parties to submit their respective Memoranda.[22]

[15] Formal Offer of Evidence for the Petitioner; *id.*, pp. 804-827.
[16] Resolution; Division Records, Vol. 3, pp. 1044-1049.
[17] Motion for Reconsideration; *id.*, pp. 1064-1075.
[18] Resolution; *id.*, pp. 1082-1086.
[19] Compliance; *id.*, pp. 1093-1096.
[20] Resolution; *id.*, pp. 1100-1103.
[21] Order; *id.*, p. 1105.
[22] *Ibid.*

Thereafter, respondent and petitioner filed their respective Memoranda on 6 December 2019[23] and 20 January 2020.[24]

With the filing of the parties' respective Memoranda, the case was submitted for decision on 24 January 2020.[25] Hence, this Decision.

The Issue[26]

> WHETHER PETITIONER IS ENTITILED TO THE TAX REFUND/CREDIT CLAIM OF ITS ALLEGED UNUTILIZED INPUT VAT IN THE TOTAL AMOUNT OF ₱16,846,916.29 FOR THE 1ST, 2ND, 3RD, AND 4TH QUARTERS OF TY 2015.

Arguments of the Parties

Petitioner's Arguments[27]

Petitioner insists that it is entitled to a tax refund/credit of its alleged unutilized excess input VAT on its purchases of goods and services attributable to its zero-rated sales of services. It alleges that it complied with the criteria laid down under ***Section 112(A) of the Tax Code.***

Petitioner explains that it is a VAT registered taxpayer which mostly provides services to Amadeus SA, a non-resident foreign corporation not doing business in the Philippines. It stresses that its transactions with the said entity were paid in acceptable foreign currency duly accounted for in accordance with the Bangko Sentral ng Pilipinas ("BSP") rules and regulations. It also explains that it is not in the business of manufacturing or repacking of goods.

Petitioner opines that the input VAT being claimed are: (a) either due or paid; (b) have not been applied against any of its output VAT in any quarter; and (c) are entirely attributable to its zero-rated sales of services.

It argues that both its administrative and judicial claims for tax refund/credit were timely filed in accordance with the Tax Code.

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[23] Memorandum for Respondent; *id.*, pp. 1110-1115.
[24] Memorandum; *id.*, pp. 1125-1154.
[25] Resolution; *id.*, p. 1156.
[26] *See* Pre-Trial Order, p. 5; Division Records, Vol. 1, p. 375.
[27] Memorandum; Division Records, Vol. 3, pp. 1125-1154.

Lastly, it cites the findings of the ICPA in his ICPA Report which found that it has claimable unutilized excess input VAT.

Respondent's Counter-Arguments[28]

Respondent contends that petitioner failed to demonstrate that the subject VAT were erroneously or illegally collected. He argues that petitioner failed to fully substantiate its tax refund/credit claim since it failed to submit supporting documents, such as sales invoices, official receipts among others to prove the same.

Lastly, respondent opines that since this is a tax refund/credit case, the appreciation of the facts and evidence submitted should be strictly construed against the taxpayer and in favor of the government.

The Ruling of the Court

The provisions governing claims for tax refund/credit of excess or unutilized creditable input VAT attributable to zero-rated sales are ***Sections 112(A) and (C) of the Tax Code***, which provide:

> "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 or 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.
>
> xxx xxx xxx
>
> (C) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one**

[28] Memorandum for Respondent; *id.*, pp. 1110-1115.

> **<u>hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.</u>**
>
> In case of **<u>full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals</u>**."[29]

The foregoing provisions were interpreted by various jurisprudence, which summarized the requisites with which the taxpayer-applicant must comply in order for it to successfully prosecute its claim for input VAT refund/credit. The said requisites are classified into certain categories, as follows:

> <u>As to the timeliness of the filing of the administrative and judicial claims</u>:
>
> 1. The administrative claim with the BIR should be filed within two ("2") years reckoned from the close of the taxable quarter when the pertinent zero-rated sales of services were made;[30]
> 2. In case of full or partial denial of the refund claim, or the failure on the part of the respondent to act on the said claim within a period of one hundred twenty ("120") days, the judicial claim should be filed with this Court, within thirty ("30") days from receipt of the decision or after the expiration of the said 120-day period;[31]
>
> <u>With reference to the taxpayer's registration with the BIR</u>:
>
> 3. The taxpayer should be a VAT-registered person;[32]
>
> <u>In relation to the taxpayer's output VAT</u>:
>
> 4. The taxpayer should be engaged in zero-rated or effectively zero-rated sales of services;[33]
> 5. For zero-rated sales of services under Sections 106(A)(2)(a)(1), (2) and (b), and 108(B)(1) and (2), the acceptable foreign currency exchange proceeds should have been duly accounted for in accordance with BSP rules and regulations;[34]

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29 Emphasis supplied.

30 Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue, G.R. No. 191495, 23 July 2018.

31 *Ibid.*

32 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 166732, 27 April 2007; Southern Philippines Power Corporation v. Commissioner of Internal Revenue, G.R. No. 179632, 19 October 2011; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009.

33 *Ibid.*

34 *Ibid.*

As for the taxpayer's input VAT being refunded:

6. The input VAT should not be transitional input taxes;[35]
7. The input VAT should be due or paid;[36]
8. the input VAT should have not been applied against output VAT during and in the succeeding quarters; and[37]
9. The input VAT claimed should be attributable to zero-rated or effectively zero-rated sales of services. However, where there are both zero-rated or effectively zero-rated sales of services and taxable or exempt sales of services, and the input VAT cannot be directly and entirely attributable to any of these sales, the input VAT shall be proportionately allocated on the basis of sales volume.[38]

Guided by the foregoing, the Court will now rule on the propriety of petitioner's claim.

Petitioner's Administrative and Judicial Claims were timely filed.

In ***Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue***,[39] the Supreme Court discussed the relevant periods when a taxpayer-applicant should file its administrative and judicial claims for tax refund/credit of input VAT, to wit:

> "xxx a VAT-registered taxpayer who has excess and unutilized creditable input VAT attributable to zero-rated sales may file an application for cash refund or issuance of TCC (administrative claim) before the CIR who has primary jurisdiction to decide such application. **The period within which to file the administrative claim is two (2) years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made**.
>
> From the submission of complete documents to support the administrative claim, **the CIR is given a 120-day period to decide. In case of whole or partial denial of or inaction on the administrative claim, the taxpayer may bring his judicial claim, through a petition for review, before the CTA who has exclusive and appellate jurisdiction. The period to appeal is thirty (30) days counted from the receipt of the decision or inaction by the CIR.**"[40]

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[35] *Ibid.*
[36] *Ibid.*
[37] *Ibid.*
[38] *Ibid.*
[39] G.R. No. 191495, 23 July 2018.
[40] Emphasis supplied.

Based on jurisprudence, the taxpayer-applicant must have filed its administrative claim within 2 years from the close of the taxable quarter when the pertinent zero-rated sales of services were made. As for the judicial claim, it must have been filed within 30 days either from the receipt of the decision of the CIR or after the lapse of 120 days from the taxpayer-applicant's submission of its complete supporting documents to the CIR, whichever comes first.

The period of submission of the complete supporting documents was clarified by the Supreme Court in the case of ***Pilipinas Total Gas, Inc., v. CIR***.[41] The case elucidates that effective 11 June 2014, taxpayer-applicants are required to submit all supporting documents together with their administrative claim. Considering the said rule, the reckoning of the 120-day period will now always coincide with the date of filing of the administrative claim.

The present claim covers the 1st, 2nd, 3rd, and 4th quarters of TY 2015. Applying the foregoing, counting 2 years from the close of each taxable quarters, the Court finds that the respective last days for filing the administrative claim are as follows:

Period	**Close of the Taxable**	**Last Day to File Administrative Claim**	**Date of Filing of the Administrative Claim**
1st Quarter of 2015 (1 January 2015- 31 March 2015)	31 March 2015	31 March 2017	31 March 2017[42]
2nd Quarter of 2015 (1 April 2015- 30 June 2015)	30 June 2015	30 June 2017	
3rd Quarter of 2015 (1 July 2015- 30 September 2015)	30 September 2015	30 September 2017	
4th Quarter of 2015 (1 October 2015- 31 December 2015)	31 December 2015	31 December 2017	

As can be gleaned above, the administrative claim was filed on 31 March 2017 or before the end of the 2-year period for each quarter. Hence, petitioner is compliant with the *first requisite.*

As for the *second requisite*, respondent had 120 days from the filing of petitioner's administrative claim, or until, 29 July 2017, to render his decision. However, since respondent did not act on the claim, petitioner had 30 days

[41] G.R. No. 207112, 8 December 2015.
[42] Application for Tax Credits/Refunds, Exhibit "P-41"; Division Records, Vol. 2, p. 954. Letter to BIR RDO No. 50, Exhibit "P-40"; Division Records, Vol. 2, pp. 946-953.

from 29 July 2017 or until 28 August 2017 to file its Petition for Review determined as follows:

Period Covered	Date of Filing of Administrative Claim	End of 120 days for BIR to decide on the claim	End of 30 days from the expiration of the 120 days	Date of Filing of the Petition for Review
1st to 4th Quarter of 2015	31 March 2017[43]	29 July 2017	28 August 2017	25 August 2017[44]

As shown above, the Petition for Review was filed on 25 August 2017 or within 30 days from the expiration of the 120-day period prescribed under the Tax Code. Thus, petitioner's judicial claim was also timely filed.

Petitioner is a VAT-registered entity.

As for the *third requisite*, petitioner was able to prove that it is a VAT-registered taxpayer per its BIR Certificate of Registration OCN 9RC0000133815 with TIN No. 005-374-900.[45]

Petitioner failed to prove that it is engaged in zero-rated or effectively zero-rated sales of services during the 1st to 4th quarters of TY 2015.

The *fourth requisite* requires that the taxpayer-applicant must be engaged in zero-rated or effectively zero-rated sales of goods and/or services. The importance of this particular requisite was highlighted in the case of ***Coca-Cola Bottlers Philippines, Inc., v. CIR***,[46] to wit:

> "A plain and simple reading of the aforequoted provisions reveals that if and when the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters. **It is only when the sales of a VAT-registered person are zero-rated or effectively zero-rated that he may have the option of applying for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales.** Such is the clear import of the Court's ruling in San Roque, to wit:

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[43] *Ibid.*
[44] Petition for Review; Division Records, Vol. 1, pp. 10-58, with annexes.
[45] BIR Certificate of Registration, Exhibit "P-103"; ICPA Compact Disk ("CD") 1.
[46] G.R. No. 222428, 19 February 2018.

> **<u>Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law</u>** xxx."[47]

In this case, petitioner alleged to have rendered VAT and VAT zero-rated sales of services for the four quarters of 2015 in the following amounts:

	VAT	VAT zero-rated	Total
1st Quarter[48]	₱ 1,720,024.89	₱ 69,062,128.75	₱ 70,782,153.64
2nd Quarter[49]	2,454,232.27	80,037,885.10	82,492,117.37
3rd Quarter[50]	2,161,138.67	60,563,155.44	62,724,294.11
4th Quarter[51]	2,472,257.32	110,476,278.75	112,948,536.07
TOTAL	**₱ 8,807,653.15**	**₱ 320,139,448.04**	**₱ 328,947,101.19**

Out of petitioner's alleged VAT zero-rated receipts amounting to ₱320,139,448.04 the ICPA was only able to validate the amount of ₱278,982,513.08. The sales of services were rendered to the following entities, as follows:

	In Peso Equivalent
Amadeus SA[52]	₱278,693,611.08
Cathay Pacific Airways LTD[53]	183,000.00
Qatar Airways Company WLL[54]	64,500.00
Asiana Philippines GSA Inc.[55]	32,000.00
Emirates[56]	5,000.00
Silkair Singapore Private Ltd.[57]	4,402.00
Total	**₱278,982,513.08**

Petitioner claims that the foregoing transactions are zero-rated sales of services rendered to various non-resident foreign corporations doing business outside the Philippines pursuant to ***Section 108(B)(2) of the Tax Code***, to wit:

> **"SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –**
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> xxx xxx xxx

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47 Emphasis supplied.
48 Amended 1st Quarter- Quarterly VAT Return, Exhibit "P-16"; Division Records, Vol. 2, pp. 914-915.
49 Amended 2nd Quarter- Quarterly VAT Return, Exhibit "P-18"; *id.*, pp. 918-919.
50 Amended 3rd Quarter- Quarterly VAT Return, Exhibit "P-20"; *id.*, pp. 922-923.
51 Amended 4th Quarter- Quarterly VAT Return, Exhibit "P-22"; *id.*, pp. 926-927.
52 Zero-Rated Receipts, Exhibit "P-123"; ICPA CD 1.
53 *Ibid.*
54 *Ibid.*
55 *Ibid.*
56 *Ibid.*
57 Zero-rated Receipts, Exhibit "P-122"; ICPA CD 1.

> **(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.**
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> xxx xxx xxx
>
> (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)**; xxx"[58]

The contention of petitioner is, however, bereft of merit.

In order to successfully prosecute a VAT refund claim under ***Section 108(B)(2) of the Tax Code***, the taxpayer-applicant must be able to satisfy the requirements provided by the Supreme Court in ***Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., (hereinafter referred to as "Burmeister Case")***,[59] to wit:

1. The services must be other than processing, manufacturing or repacking of goods;
2. The recipient of such services is doing business outside the Philippines; and
3. The payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

Here, petitioner presented its Amended Articles of Incorporation.[60] The document provides that it is engaged in the business of marketing the Amadeus System in the Philippines. Clearly, the said service does not involve the processing, manufacturing or repacking of goods. Hence, petitioner satisfies the first requirement.

To reiterate the second requirement, the ***Burmeister Case*** provides that the recipient of the zero-rated services should be an entity doing business outside the Philippines. The rule was further expounded in ***Accenture, Inc., v. CIR***,[61] where the Supreme Court held:

> "Consequently, to come within the purview of Section 108 (B) (2), it is not enough that the recipient of the service be proven to be a foreign corporation; **rather, it must be specifically proven to be a nonresident foreign corporation**."

[58] Emphasis supplied.
[59] G.R. No. 153205, 22 January 2007.
[60] See Amended Articles of Incorporation, Exhibit "P-3", p. 4 of 11; Division Records, Vol. 2, p. 830.
[61] G.R. No. 190102, 11 July 2012.

Corollary, the term "nonresident foreign corporation" was defined under ***Section 22 of the Tax Code*** as:

> "SEC. 22. Definitions. — When used in this Title:
>
> xxx xxx xxx
>
> (I) The term 'nonresident foreign corporation' applies to a **foreign corporation not engaged in trade or business within the Philippines.**"[62]

The term "doing business" was expounded by ***Section 3(d) of the Foreign Investments Act ("FIA")***,[63] as:

> "SEC. 3. Definitions. – As used in this Act:
>
> d) the phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totaling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of some of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization: Provided, however, That the phrase "doing business" shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account;"

and was elaborated by various jurisprudence as a connotation that "implies a **continuity of commercial dealings and arrangements**, and contemplates, to that extent, **the performance of acts or works or the exercise of some of the functions normally incident to or in progressive prosecution of the purpose and subject of its organization**".[64]

In ***Agilent Technologies Singapore v. Integrated Silicon Technology Philippines Corporation***,[65] the Supreme Court identified two types of tests in order to determine whether a foreign corporation is considered doing business in the Philippines or not, to wit:

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[62] Emphasis supplied.
[63] Republic Act No. 7042, as amended, 28 March 1996.
[64] Agilent Technologies Singapore (PTE) LTD., v. Integrated Silicon Technology Philippines Corporation, et. al., G.R. No. 154618, 14 April 2004.
[65] *Ibid.*

"xxx, this Court discoursed on the **two general tests to determine whether or not a foreign corporation can be considered as "doing business" in the Philippines**. The first of these is the **substance test**, thus:

> **The true test [for doing business], however, seems to be whether the foreign corporation is continuing the body of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another.**

The second test is the **continuity test**, expressed thus:

> **The term [doing business] implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in the progressive prosecution of, the purpose and object of its organization**."[66]

In the same case, the Supreme Court applied the tests in certain scenarios,[67] to wit:

> "Although each case must be judged in light of its attendant circumstances, jurisprudence has evolved several guiding principles for the application of these tests. For instance, considering that it transacted with its Philippine counterpart for seven years, engaging in futures contracts, this Court concluded that the foreign corporation in Merrill Lynch Futures, Inc. v. Court of Appeals and Spouses Lara, was doing business in the Philippines. In Commissioner of Internal Revenue v. Japan Airlines ("JAL"), the Court held that JAL was doing business in the Philippines, i.e., **its commercial dealings in the country were continuous** – despite the fact that no JAL aircraft landed in the country – as it sold tickets in the Philippines through a general sales agent, and opened a promotions office here as well.
>
> In General Corp. of the Phils. v. Union Insurance Society of Canton and Fireman's Fund Insurance, a foreign insurance corporation was held to be doing business in the Philippines, as it appointed a settling agent here, and issued 12 marine insurance policies. We held that these transactions were not isolated or casual, but manifested the continuity of the foreign corporation's conduct and its intent to establish a continuous business in the country. In Eriks PTE Ltd. v. Court of Appeals and Enriquez, the foreign corporation sold its products to a Filipino buyer who ordered the goods 16 times within an eight-month period. Accordingly, this Court ruled that the corporation was doing business in the Philippines, as there was a clear intention on its part to continue the body of its business here, despite the relatively short span of time involved. Communication Materials and Design, Inc., et al. v. Court of Appeals, ITEC, et al. and Top-Weld Manufacturing v. ECED, IRTI, et al. both involved **the License and Technical Agreement and Distributor Agreement of foreign corporations with their respective local counterparts that were the primary bases for the Court's ruling that the foreign corporations were**

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66 Emphasis supplied.

67 Agilent Technologies Singapore (PTE) LTD., v. Integrated Silicon Technology Philippines Corporation, et. al., G.R. No. 154618, 14 April 2004.

> **doing business in the Philippines**. In particular, the Court cited the highly **restrictive nature of certain provisions in the agreements involved**, such that, as stated in Communication Materials, **the Philippine entity is reduced to a mere extension or instrument of the foreign corporation. For example, in Communication Materials, the Court deemed the "No Competing Product" provision of the Representative Agreement therein restrictive**."[68]

In this case, petitioner holds out that Amadeus SA is a foreign corporation not doing business in the Philippines. Petitioner stresses that it functions as the latter's sole distributor of its products in the Philippines. That in doing so, it transacts business in its own name which is an exception to the term "doing business" under the ***Section 3(d) of the FIA***.

To prove its assertions, petitioner submitted Amadeus SA's Company Statute,[69] the printout screenshot of the website *Comision Nacional del Mercado de Valores* ("CNMV"), or Spain's National Securities Market Commission,[70] SEC Certificate of Non-Registration[71] which all show that the latter is a foreign corporation not registered to do business in the Philippines, and the Amadeus Commercial Organization ("ACO") Agreement,[72] which delineates the relationship of petitioner between Amadeus SA.

Normally, the presentation of both Foreign Articles/Certificate of Incorporation and SEC Certificate of Non-Registration will ordinarily prove that an entity is a foreign corporation not doing business in the Philippines.[73] However, an exception to this rule is when there is clear and convincing evidence that would prove otherwise.[74]

Here, the ACO Agreement disproves petitioner's claims that Amadeus SA is a non-resident foreign corporation doing business outside the Philippines. Indeed, the said agreement is replete with provisions which signify that petitioner is merely Amadeus SA's conduit in conducting its business in the Philippines.

First, the relationship between petitioner and Amadeus SA is **highly restrictive in nature**. Section 2.1 of the ACO Agreement, provides that petitioner is obligated to "market, distribute and provide appropriate access to the Amadeus System to subscribers on an exclusive basis".[75] This was further elaborated under Part 18 of the ACO Agreement, which prohibits petitioner from distributing and/or participating in equity in any venture that competes

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[68] Footnotes omitted, emphasis supplied.
[69] *Estatutos Sociales De Amadeus IT Group, S.A.*, Exhibit "P-6"; *id.*, pp. 873-900.
[70] Printout Screenshot of CNMV website, Exhibit "P-9"; *id.*, p. 909.
[71] Certificate of Non-Registration of Company, Exhibit "P-5"; *id.*, p. 871.
[72] ACO Agreement, Exhibit "P-4"; *id.*, pp. 838-870.
[73] Chevron Holdings, Inc. v. CIR, CTA EB Case Nos. 1508 & 1509, 21 March 2018.
[74] Amadeus Marketing Philippines, Inc., v. CIR, CTA *EB* Case No. 1838, 26 November 2019.
[75] *See* ACO Agreement, Exhibit "P-4", p. 4; Court in Division Docket Vol. 2, p. 842; *See also* ACO Agreement, Exhibit "P-4", p. 15; *id.*, p. 853.

directly or indirectly with Amadeus SA in the marketing of its global distribution system services to subscribers or from providing products and services that competes with Amadeus SA's products and services without its prior consent.

The foregoing provisions effectively disallow petitioner to market and distribute products provided by other entities which negates petitioner's contention that it is independent from Amadeus SA.

The Court's observation is consistent with the finding of the Supreme Court in ***Communication Materials and Design, Inc., et. al. v. Court of Appeals, el. al.,*** to wit:[76]

> "A perusal of the agreements between petitioner ASPAC and the respondents shows that there are provisions **which are highly restrictive in nature, such as to reduce petitioner ASPAC to a mere extension or instrument of the private respondent.**
>
> The **"No Competing Product"** provision of the Representative Agreement between ITEC and ASPAC provides: **"The Representative shall not represent or offer for sale within the Territory any product which competes with an existing ITEC product or any product which ITEC has under active development."** Likewise pertinent is the following provision: "When acting under this Agreement, REPRESENTATIVE is authorized to solicit sales within the Territory on ITEC's behalf but is authorized to bind ITEC only in its capacity as Representative and no other, and then only to specific customers and on terms and conditions expressly authorized by ITEC in writing."
>
> **When ITEC entered into the disputed contracts with ASPAC and TESSI, they were carrying out the purposes for which it was created**, i.e., to market electronics and communications products. **The terms and conditions of the contracts as well as ITEC's conduct indicate that they established within our country a continuous business, and not merely one of a temporary character.**"[77]

Second, the ACO Agreement provides numerous instances showing Amadeus SA's participation in running the marketing and distribution of the Amadeus System in the Philippines, which include:

a) Amadeus SA is permitted to directly contract with multinational subscribers whether the same is based within or outside the Philippines;[78]

b) Amadeus SA may contract with subscribers within the Philippines who wish to make use of the global distribution system services through Amadeus' online and corporate products;[79] *f*

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[76] G.R. No. 102223, 22 August 1996.
[77] Emphasis supplied.
[78] *See* ACO Agreement, Exhibit "P-4", p. 9; Division Docket Vol. 2, p. 847.
[79] *Ibid.*

c) Petitioner is duty bound to honor any obligation undertaken by Amadeus SA with third-party licensors relative to the Amadeus' products;[80] and

d) Amadeus SA may, on its own, terminate the agreement entered between any Philippine subscriber in the event of misuse or abuse of the Amadeus System.[81]

Clearly, the ACO Agreement paved the way for Amadeus SA, through petitioner, to further its purpose to continually promote, market, and distribute the Amadeus System in the Philippines consistent with the definition of "doing business" in the Philippines under ***Section 3(d) of the Foreign Investments Act***. The foregoing circumstances contradict petitioner's claim that it is acting under its own name in its role as sole distributor of the Amadeus System in the Philippines.

Considering the foregoing discussions, the Court is constrained to rule that the sales of services rendered by petitioner to Amadeus SA are not zero-rated in accordance with ***Section 108(B)(2) of the Tax Code***.

As for petitioner's sales of services to its other clients, namely: Silkair Singapore Private Ltd., Asiana Philippines GSA Inc., Cathay Pacific Airways LTD, Emirates, and Qatar Airways Company WLL, the Court is compelled to disallow the same for petitioner's failure to prove that these transactions qualify for VAT zero-rating. Petitioner did not present any evidence to convince this Court otherwise.

This Court reiterates its consistent ruling that actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is strictissimi scrutinized and must be duly proven. The burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[82]

Seeing that petitioner failed to prove that its clients are non-resident foreign corporations doing business outside the Philippines, it follows that none of petitioner's services qualify for zero-rating and as such it is not entitled to its claim for tax refund/credit representing its alleged input VAT

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[80] *See* ACO Agreement, Exhibit "P-4", p. 4; *id.*, p. 842.
[81] *See* ACO Agreement, Exhibit "P-4", p. 9; *id.*, p. 847.
[82] Coco-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222428, 19 February 2018

for the 1st to 4th quarters of TY 2015. With this, the Court sees no reason to belabor on whether petitioner complied with the remaining requisites laid down under ***Section 112 of the Tax Code***.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

I attest that the conclusion in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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