REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

FINANCIAL TIMES ELECTRONIC PUBLISHING PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 9631

- versus -

Members:

CASTAÑEDA, JR., *Chairperson,*
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 07 2019 3:10 pm

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DECISION

BACORRO-VILLENA, J.:

Before this Court is a Petition for Review filed by Financial Times Electronic Publishing Philippines, Inc. (**petitioner/FTEPP**) under Rule 4, Section 3(a)(2)[1] of the Revised Rules of the Court of Tax

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1 **SEC. 3.** *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
...
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section

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Appeals (**RRCTA**), in relation to Section 7(a)(4)[2] of Republic Act (RA) No. 9282.[3] The petition seeks the reversal of the Commissioner of Internal Revenue's (**CIR**'s/**respondent**'s) denial of petitioner's tax refund amounting to Two Million Five Hundred Eighty-Three Thousand One Hundred Twelve Pesos and Ninety Centavos (₱2,583,112.90). The denial is inferred from respondent's inaction on the request for tax refund.

The Parties

Petitioner FTEPP is a domestic corporation duly organized and existing under Philippine laws, with principal address at 16th Floor Net Park, 5th Avenue, E-Square, Crescent Park West, Bonifacio Global City, Taguig, Metro Manila.

On the other hand, respondent is the duly appointed CIR, empowered to perform the duties of his Office, including acting upon the protest cases and approval of claims for refund or tax credit as provided by law and implementing regulations.

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228 of the National Internal [R]evenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

...

2 **Section 7.** Section 7 of the same Act is hereby amended to read as follows:
"Sec. 7. Jurisdiction. - The CTA shall exercise:
"a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
...
"4. Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs...

3 AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

Facts of the Case

On 21 February 2017, petitioner filed before the Bureau of Internal Revenue (**BIR**) - Revenue District No. 044, an Application for Tax Credits/Refunds. To support its claim, it also submitted a duly accomplished BIR Form 1914[4] and a Letter Summary[5] of other supporting documents, respectively, both of which the BIR received and stamped.[6]

In its application for tax credit/refund, petitioner claimed for the issuance of tax credit certificates representing unutilized input taxes directly attributable to its supposed Value Added Tax (**VAT**) zero-rated sales as declared in its VAT Return for the first taxable quarter of calendar year (CY) 2015 (or from 01 January 2015 to 31 March 2015),[7] amounting to **₱2,583,112.90**. However, due to the CIR's inaction on the aforementioned claim within 120 days, petitioner's application for tax credit/refund was deemed denied[8] in accordance with Section 112(D)[9] of the National Internal Revenue Code (**NIRC**), in relation to Revenue Memorandum Circular 54-2014.[10]

Subsequently, petitioner elevated its claim to the Court *via* a Petition for Review filed on 19 July 2017.[11] The case was raffled to this Court's First Division.

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4 Exhibit "P-10".

5 Exhibit "P-11".

6 Petition for Review dated July 19, 2017, *Rollo*, Volume I, pp. 10-31.

7 Id., pp. 13-14.

8 *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. No. 193301, 11 March 2013.

9 **Sec. 112.** *Refunds or Tax Credits of Input Tax.* –

...

(D) *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 hundred twenty (120) days from the date of submission of comp[l]ete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of 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.

...

10 Clarifying Issues Relative to the Application for Value Added Tax Refund/Credit under Section 112 of the NIRC, as amended.

11 *Rollo*, Vol. I, pp. 10-16.

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Timeliness of the Petition

Section 112(A)[12] of the NIRC states that a VAT-registered person whose sales are zero-rated is given a period of two (2) years within which to file an administrative claim with the BIR for the refund or credit of unutilized input taxes.[13] Furthermore, as held by the Supreme Court, in *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*[14], the 120-day period for the CIR to act on the administrative claim for a tax refund or credit under Section 112(D) is jurisdictional.[15] Only after the lapse of said period will the claimant have a right to pursue a judicial claim with the Court of Tax Appeals (CTA) within 30 days after said lapse.

In the present case, the period in dispute is from 01 January 2015 to 31 March 2015. Petitioner's administrative claim for tax credit certificates was filed with the BIR on 21 February 2017, together with all its supporting documents. Therefore, the CIR had until 21 June 2017 within which to decide on petitioner's claims. The administrative claim not having been acted upon, petitioner thus had until 21 July 2017 to file its judicial claim before the CTA. Accordingly, the present Petition for Review, filed on 19 July 2017, it is deemed to have been timely filed.

Proceedings before the CTA First Division

In its petition, petitioner mainly argued that, as a VAT-registered entity, all the services to Financial Times Limited (**FTL**)[16], consisting of

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12 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.

13 Id.

14 G.R. No. 184823, 06 October 2010.

15 Id.

16 Financial Times Limited was also referred to as "The Financial Times Limited", see Exhibit "P-5", p. 399.

accounting and business process services, were subject to zero percent VAT rate since FTL is a nonresident entity *not* engaged in business in the Philippines and who is outside the Philippines. It added that FTL is an entity registered under the laws of England, with office address at #1 Southwark Bridge, London, SE1, 9HL, England, and its services to FTL were covered by the provisions of Section 108(B)(2) of the NIRC.[17]

In response to petitioner's claims, respondent in his Answer[18], countered that petitioner has the burden of proof to not only prove its entitlement to the tax refund or credit claimed under substantive law, but also to satisfactorily substantiate the same with proper documentary evidence.[19] He maintained that claims for refund are to be construed strictly against the claimant as the same partake the nature of exemption from taxation.

Later, after the parties duly filed their respective pre-trial briefs, the Court approved[20] their Joint Stipulation of Facts and Issues wherein the genuineness and authenticity of the following documents were admitted, namely:

...

1. Petitioner's Bureau of Internal Revenue (BIR) Certificate of Registration (COR) No. 9RC0000781891E with tax identification number (TIN) 204-611-007-00000.[21]

2. Petitioner's accomplished BIR Form 1914 for the period of 01 January 2015 to 31 March 2015, duly stamped received by the BIR on 21 February 2017.[22]

3. Letter Summary of the Supporting documents duly stamped and received by the BIR on 21 February 2017.[23]

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17 (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.

...

(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).

18 Filed on 22 September 2017.

19 Answer dated 22 September 2017, *Rollo*, Vol. I, pp. 129-132.

20 Resolution dated 19 February 2018; id., pp. 238-246; see also Pre-Trial Order dated 07 May 2018, id., pp. 289-295.

21 Exhibit "P-3".

22 Exhibit "P-10".

23 Exhibits "P-11" to "P-11-A".

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4. Letter of Authority No. eLA201500050020 dated 01 March 2017 issued to Revenue Officer Gloria Beltran, and Group Supervisor Luzviminda Sabile.[24]

...

In the trial that ensued thereafter, petitioner presented its witnesses: (1) Paulito B. De Pano (**De Pano**), Financial Controller of FTEPP; and, (2) Emmanuel Y. Mendoza (**Mendoza**), the Independent Certified Public Accountant (**ICPA**) who the Court appointed as such upon petitioner's motion.[25]

On the witness stand, De Pano declared that he is in charge of supervising compliance with laws and government rules and regulations as well as paying taxes and licenses. He also supervises the Financial Department that has custody of accounts and other accounting records of the company. Thus, he has access to petitioner's financial statements, tax returns, BIR Certificate of Registration, sales invoices, official receipts and other accounting records, and corporate documents such as Articles of Incorporation (**AOI**), By-laws and General Information Sheet (**GIS**). *Per* its amended AOI, petitioner is engaged in financial and corporate information data collection facility in the Philippines and in other activities connected thereto or incidental to the said business.

De Pano added that, in the course of petitioner's business from 01 January 2015 to 31 March 2015, it rendered accounting and business support services to FTL, a nonresident foreign corporation. As proof that FTL is such, he presented an "authenticated" copy of FTL's Articles of Incorporation.[26] Based on petitioner's Service Agreement[27] with FTL, the services were rendered in the Philippines and the consideration for which was paid for and inwardly remitted in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (**BSP**). To also substantiate petitioner's claim that the services rendered to FTL were subject to zero percent VAT rate, he submitted VAT zero-rated official receipts, summary of export sales and certification of inward

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24 Exhibit "P-16".

25 Motion to Commission an Independent Certified Public Accountant dated February 14, 2018, *Rollo*, Vol. I, pp. 247-249.

26 Exhibit "P-4", as attached to a certification from De Pinna Notaries.

27 Exhibit "P-5".

remittances. De Pano added that official receipts were issued in accordance with BIR-issued Authority to Print (**ATP**) rules.[28]

When petitioner filed its Quarterly VAT Return (**QVR**) for 01 January 2015 to 31 March 2015[29], it showed zero amounts of VATable sales, sales to the government and output tax due for the quarter and Allowable Input Tax carried over from previous quarter in the amount of ₱2,099,155.86. The same QVR also showed VAT zero-rated sales of ₱134,804,650.83 and domestic purchases of services in the total amount of ₱2,583,112.90.[30]

De Pano continued that, for petitioner to recover the input VAT for the period of 01 January 2015 to 31 March 2015, it filed the administrative claim for tax refund or for the issuance of tax credit certificates (**TCC**) for ₱2,583,112.90.[31] According to him, this was made since the excess VAT input taxes are directly attributable to its zero-rated sales for the first quarter of 2015. Along with the application, petitioner submitted the summary of supporting documents. Thereafter, BIR issued a Letter of Authority (**LOA**)[32] to its revenue officers and an examination of its documents took place immediately after.

On petitioner's claim for issuance of a TCC, De Pano declared that BIR did not issue the same despite the lapse of 120-day period to process its claim. Petitioner then secured a certification from the Department of Finance (**DOF**) stating that it had no similar or previous claim for tax credit or tax drawback under the NIRC.

Mendoza, on the other hand, testified that petitioner generated zero-rated sales for the subject period and these are duly substantiated by VAT official receipts and/or VAT sales invoices wherein the term "zero-rated sale" was printed prominently. He also corroborated De Pano's declaration that petitioner had unutilized and unapplied input tax credits for the periods mentioned which are directly attributable to its VAT zero-rated sales. According to him, petitioner

[28] Exhibit "P-6".
[29] Exhibit "P-7".
[30] See Purchase Transaction-Reconciliation of Listing for Enforcement, Exhibits "P-8" and "P-9".
[31] BIR Form 1914 (Application for Tax Refunds/Credits), Exhibit "P-10".
[32] Exhibit "P-16".

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had no sales of service subject to 12% VAT from the second quarter of CY 2015 until the first quarter of CY 2018, where input VAT can be credited against the resulting 12% output VAT.

During his testimony, Mendoza also submitted his report[33] and a Certificate of Non-Registration[34] from the Securities and Exchange Commission (**SEC**) issued to FLT, that became the basis for its claim for the issuance of tax refund.

Later, petitioner filed its Formal Offer of Evidence (**FOE**) with Omnibus Motion for Leave[35] for the purpose of scheduling a hearing date to recall the ICPA to the witness stand to rectify some errors in the latter's report. Still later, petitioner filed a separate Motion for Leave[36] seeking to schedule a Commissioner's Hearing for comparison and marking of petitioner's documents particularly Exhibits "P-10-A"[37], "P-11-A"[38] and "P-12-A"[39] and to admit the same as part of its FOE. The Court resolved both motions in petitioner's favor.[40]

In the meantime, CTA Administrative Circular No. 02-2018 was issued on 18 September 2018 thereby reorganizing the three (3) Divisions of the CTA. As a result, the case was transferred to the Second Division.[41]

<u>Proceedings before the CTA Second Division</u>

The Second Division thereafter ordered the recall of the ICPA and set another Commissioner's Hearing.[42]

Subsequently, petitioner proceeded with its FOE with Manifestation[43], wherein it offered Exhibits **"P-1"**[44], **"P-2"**[45], **"P-2-A"**[46],

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33 Exhibit "P-37".
34 Exhibit "P-34".
35 *Rollo*, Vol. I, pp. 357-377; Filed on 25 July 2018.
36 Id., p. 436.
37 Signature of Paulito De Pano in the Application for Tax Credits/Refunds (BIR Form 1914).
38 Signature of Grace Baquiran on Petitioner's letter summary of supporting documents.
39 Signature of Paulito De Pano on the Sworn Certification.
40 Resolution dated 11 September 2018, *Rollo*, Vol. I, pp. 457-459.
41 Order dated 27 September 2018.
42 Order dated 15 November 2018, *Rollo*, Vol. I, supra, p. 462.
43 Id., pp. 470-488.
44 SEC Certificate of Filing of Amended Articles of Incorporation dated 29 July 2016.

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"P-3"[47], "P-4"[48], "P-5"[49], "P-5-A"[50], "P-5-B"[51] and "P-5-C"[52], "P-6"[53], "P-7"[54], "P-8"[55], "P-9"[56], "P-10"[57] and "P-10-A"[58], "P-11"[59] and "P-11-A"[60], "P-12"[61] and "P-12-A"[62], "P-13"[63], "P-14" and "P-14-A"[64], "P-15"[65], "P-16"[66], "P-17"[67], "P-18"[68] and "P-18-A"[69], "P-19"[70] and "P-19-A"[71], "P-20-1"[72], "P-20-2"[73], "P-20-3"[74], "P-20-4"[75], "P-20-5"[76], "P-20-6"[77], "P-20-7"[78], "P-20-8"[79], "P-20-9"[80], "P-20-10"[81], "P-20-11"[82], "P-20-12"[83] and "P-20-13"[84], "P-21"[85], "P-22"[86], "P-23-A1" to "P-23-A2"[87], "P-23-B1"[88],

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45 Amended Articles of Incorporation.
46 Primary Purpose of the Petitioner.
47 Certificate of Registration (COR) with tax identification number (TIN) 204-611-007-000.
48 Authenticated Articles of Incorporation of Financial Times Limited.
49 Services Agreement between The Financial Times Limited and the Petitioner.
50 Section 1 of the Services Agreement.
51 Section 2.1 of the Services Agreement.
52 Section 3.1 of the Services Agreement.
53 Authority to Print No. OCN9AU0000560794 dated 30 April 2013.
54 Quarterly VAT Return filed on 17 April 2015 by the Petitioner for the period 01 January 2015 to 31 March 2015.
55 Purchase Transaction – Reconciliation of Listing for Enforcement for the period 01 January 2015 to 31 March 2015.
56 Sales Transaction – Reconciliation of Listing for Enforcement for the period 01 January 2015 to 31 March 2015.
57 BIR Form 1914 (Application for Tax Credits/Refunds) for the period 01 January 2015 to 31 March 2015 representing the administrative claim of the Petitioner for refund or the issuance of TCC.
58 Signature of Paulito De Pano in the Application for Tax Credits/Refunds (BIR Form 1914).
59 Letter summary of supporting documents duly received on February 21, 2017 addressed to BIR RDO 44.
60 Signature of Grace Baquiran on Petitioner's letter summary of supporting documents.
61 Sworn Certification dated 15 February 2017.
62 Signature of Paulito De Pano on the Sworn Certification.
63 Checklist of Mandatory Requirements for Claims for VAT Credit/Refund.
64 Second Quarterly VAT Return of Taxable Year 2015 filed on 22 July 2015 reflecting the VAT refund/TCC claimed amounting to P3,221,889.64 under the Line Item 23D thereof as a deduction against the Total Available Input Taxes during the quarter.
65 Corporate Secretary's Certificate dated 11 January 2017.
66 BIR Letter of Authority No. eLA201500050020 dated 01 March 2017.
67 DOF Certification dated 29 May 2015.
68 Judicial Affidavit of Emmanuel Y. Mendoza dated 02 March 2018.
69 Signature of Emmanuel Y. Mendoza in the Judicial Affidavit dated 02 March 2018.
70 Judicial Affidavit of Paulito B. De Pano dated 16 January 2018.
71 Signature of Paulito B. De Pano in the Judicial Affidavit dated 16 January 2018.
72 CY 2015 1st Quarter VAT return.
73 Amended CY 2015 2nd Quarter VAT Return.
74 Amended CY 2015 3rd Quarter VAT Return.
75 Amended CY 2015 4th Quarter VAT returns.
76 Amended CY 2016 1st Quarter VAT Return.
77 Amended CY 2016 2nd Quarter VAT Return.
78 Amended CY 2016 3rd Quarter VAT Return.
79 Amended CY 2016 4th Quarter VAT Return.
80 Amended CY 2017 1st Quarter VAT Return.
81 Amended CY 2017 2nd Quarter VAT Return.
82 CY 2017 3rd Quarter VAT Return.
83 CY 2017 4th Quarter VAT Return.
84 CY 2018 1st Quarter VAT Return.
85 Schedule of VAT zero-rated sales for CY 2015.
86 Schedule of domestic purchases of services and goods other than capital goods.

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"P-24-1" to **"P-24-100"**[89], **"P-25-1"** to **"P-25-65"**[90], **"P-27-1"** to **"P-27-3"**[91], **"P-28-1"**[92], **"P-29-1"** to **"P-29-2"**[93], **"P-30-1"** to **"P-30-21"**[94], **"P-31-1"** to **"P-31-3"**[95], **"P-32"**[96], **"P-33"**[97], **"P-34"**[98], **"P-35-1"** to **"P-35-37"**[99], **"P-36-1"** to **"P-36-37"**[100], **"P-37"**[101] and **"P-37-A"**[102], **"P-38"**[103] and **"P-38-A"**[104], **"P-39"**[105] and **"P-39-A"**[106], **"P-40"**[107] and **"P-41"**.[108]

In respondent's Comment[109], he did not object to the admission of petitioner's evidence but reserved his objections to the admissibility, materiality and relevance of the offered exhibits.

Except for Exhibit "P-25-57"[110], wherein the duly marked copy was not submitted, the Second Division admitted the rest of petitioner's exhibits.[111] Petitioner filed a Motion for Reconsideration (**MR**)[112] to the aforementioned Resolution and sought admission of the excluded evidence. It later on filed another motion; this time, seeking to

87 Supporting VAT zero-rated Official Receipts issued by the Petitioner for CY 2015 1st Quarter.
88 Certificate of inward remittances issued by HSBC bank.
89 Supporting Invoices and Official Receipt issued to the Petitioner for the Purchases of Goods and Services for CY 2015 1st Quarter.
90 Supporting Invoices and Official Receipt issued to the Petitioner for the Purchases of Goods and Services for CY 2015 1st Quarter.
91 Supporting Invoices and Official Receipt issued to the Petitioner for the Purchases of Goods and Services for CY 2015 1st Quarter.
92 Supporting Invoices and Official Receipt issued to the Petitioner for the Purchases of Goods and Services for CY 2015 1st Quarter.
93 Supporting Invoices and Official Receipt issued to the Petitioner for the Purchases of Goods and Services for CY 2015 1st Quarter.
94 Supporting Invoices and Official Receipt issued to the Petitioner for the Purchases of Goods and Services for CY 2015 1st Quarter.
95 Supporting Invoices and Official Receipt issued to the Petitioner for the Purchases of Goods and Services for CY 2015 1st Quarter.
96 Authority to Print No. OCN9AU0000560794 dated April 30, 2013.
97 Services Agreement between The Financial Times Limited and the Petitioner.
98 Certificate of Non-Registration from the SEC.
99 CY 2005 2nd Quarter VAT Return up to CY 2014 2nd Quarter VAT Return.
100 Supporting Schedules for the Input VAT carried over in the CY 2015 2nd Quarter VAT Return of the Petitioner.
101 Independent CPA Report for CTA Case No. 9631 dated 24 May 2018.
102 Signature of Emmanuel Y. Mendoza in the 24 May 2018 Independent CPA Report.
103 Supplemental Independent CPA Report for CTA Case No. 9631 dated 07 June 2018.
104 Signature of Emmanuel Y. Mendoza in the 07 June 2018 Independent CPA Report.
105 Judicial Affidavit of Emmanuel Y. Mendoza dated 03 July 2018.
106 Signature of Emmanuel Y. Mendoza in the Judicial Affidavit dated 03 July 2018.
107 Compact Disc containing the softcopies of the exhibits identified in the 24 May 2018 ICPA Report.
108 Compact Disc containing the softcopies of the exhibits identified in the 07 June 2018 ICPA Report.
109 Filed on 13 December 2018, *Rollo*, Vol. I, p. 490.
110 Sales Invoice No. 190485, *Rollo*, Vol. II, p. 501.
111 Resolution dated 28 January 2019, id., pp. 494-496.
112 Filed on 08 February 2019, id., pp. 497-499.

substitute its Exhibit "P-34"[113], citing SEC's error in its Certificate of Non-Registration which specified the name "Financial Times Group, Ltd." as a non-registered entity when it should have been "Financial Times Limited." The Court granted the motion and suspended the period for the submission of memoranda.[114]

Subsequently, the Second Division issued a Resolution denying petitioner's motion to substitute Exhibit "P-34"[115], deeming the same unnecessary. After the parties filed their respective memoranda, the Court thereafter submitted the case for decision.[116]

Issue

The parties submit this sole issue for the consideration of the Court, that is –

> WHETHER PETITIONER IS ENTITLED TO THE ISSUANCE OF TAX CREDIT CERTIFICATES FOR THE EXCESS AND UNUTILIZED INPUT VALUE ADDED TAX (VAT), DIRECTLY ATTRIBUTABLE TO ITS VALUE ADDED TAX ZERO-RATED SALES FROM 01 JANUARY 2015 TO 31 MARCH 2015, AMOUNTING TO ₱2,583,112.90.

Ruling of the Court

The Court, through this Second Division, finds no merit in petitioner's contentions and thus resolves to deny this petition.

It is well-settled that the law disfavors exceptions to taxation, making any rule providing for such to be construed *strictissimi juris* against the taxpayer.[117] Provisions granting tax refunds and credits, such as those invoked by the petitioner in its action before this Court, must therefore be construed strictly against it.

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113 Certificate of Non-Registration from the SEC.
114 Resolution dated 15 March 2019, *Rollo*, Vol. II, p. 511.
115 Resolution dated 10 May 2019.
116 Resolution dated 15 July 2019.
117 *Chevron Philippines Inc. v. CIR*, G.R. No. 210836, 01 September 2015; *Gulf Air Company v. CIR*, G.R. No. 182045, 19 September 2012.

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The Supreme Court expanded the above legal rule when it held that "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."[118] Hence, petitioner is tasked to discharge this burden by an affirmative showing that it is in fact entitled to the exception it claims. Its evidence should also unequivocally prove the same. As earlier stated, tax refunds are in the nature of tax exemptions which result in the loss of revenue for the government. Expectedly, the burden of justifying the exemption rests on the person claiming it.[119]

Per record, petitioner bases his claim for tax credit on Section 108(B)(2) of the NIRC, which states:

> ...
>
> Sec. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -
>
> ...
>
> (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.
>
> ...
>
> (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).[120]
>
> ...

The Supreme Court, in *Commissioner of Interval Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao Inc. (Burmeister)*[121], in interpreting Section 108(B)(2) of the NIRC, previously Section 102(b)(2), held that:

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118 *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 222428, 19 February 2018.
119 *CIR v. Nokin (Philippines), Inc.*, CTA EB Nos. 1241 and 1243, 30 March 2016.
120 Section 108(B)(2) National Internal Revenue Code of 1997 as amended; emphasis supplied.
121 G.R. No. 153205, 22 January 2007.

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> ...
> The Tax Code not only requires that the services be other than "processing, manufacturing or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) **is that the recipient of such services is doing business outside the Philippines.**"[122]
> ...

A review of the Court's records yields petitioner's pieces of evidence to prove its supposed services to FTL to be as follows:

> ...
> 1.) A certification from the Philippine Embassy in London, United Kingdom[123] to which has been attached a Certification Attestation (attestation) by one David Noel Lloyd Fawcett[124] (Fawcett), with an Apostille[125] signed by one, A. Khan (Khan) and to which the following documents have been further attached: **a)** a Certificate of Incorporation (**COI**) of FTL; **b)** a Certificate of Change of Name[126] (**COCN**) by FTL to "Financial Times Limited"[127] showing that the said entity was and is currently registered in England; and, **c)** a certification from the Registrar of Companies For England (**CRCE**) executed by one, L. Prosser[128]; and,
>
> 2.) A Certificate of Non-registration from the SEC which shows that, as per the SEC's records, no entity by the name of "Financial Times Limited" is registered in the Philippines as either a corporation or a partnership.[129]
> ...

On their own, the above documents fail to withstand judicial scrutiny. *Firstly*, the COI only shows the place and date of FTL's incorporation. *Secondly*, the COCN simply confirms the change of company's name from "The Financial Times (1928), Limited"[130] to "The Financial Times Limited." *Lastly*, the CRCE merely reiterates the

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122 Id.; emphasis supplied.
123 Exhibit "P-4".
124 *Rollo*, Vol. I, p. 394.
125 Id., p. 395.
126 Id., p. 396.
127 Id., p. 397.
128 Id., p. 398.
129 Exhibit "P-34", supra.
130 See Vol. I, pp. 394, 396-398.

information already included in the earlier two documents, only with the addition of the names of FTL's directors, FTL's current office address, and a testament to FTL's continuous existence. On the other hand, the SEC's Certificate of Non-Registration only merely notes the lack of registration of any office within the country out of which FTL may conduct its business.[131]

In *Accenture, Inc. v. Commissioner of Internal Revenue*[132] *(Accenture)*, where the Supreme Court reiterated its ruling in *Burmeister*, it declared that it is not enough to show that the recipient of the service (from which zero-rated VAT is claimed) is a foreign corporation, it must also be established that the recipient is a "nonresident corporation". Additionally, it must also be shown that the recipient of the service is not doing business in the Philippines.

Following the ruling in *Accenture*, a document such as a SEC Certificate of Non-Registration must be corroborated by some other document of equal relevance and evidentiary weight. A claim that a foreign entity is a nonresident corporation must thus be supported by a SEC certificate of non-registration, together with a certificate of incorporation in a foreign state or some similar document absent any indication to disqualify it from classification as a nonresident entity.[133] In the case at bar, petitioner must then establish that FTL, to whom its services were rendered, is not only a foreign entity but it is not likewise engaged in business within the Philippines.

At first blush, the petitioner ostensibly complies with this requirement. There is no question regarding genuineness and the authenticity of FTL's Certificate of Non-Registration. However, a closer inspection of the COI, COCN, and CRCE reveals a fatal flaw in the manner of their authentication. The Court finds that these documents failed to adhere to the pertinent rules regarding the mode and manner of judicially proving foreign public documents and thus, are unable to satisfactorily establish that FTL is not engaged in business in the Philippines as contemplated in Section 108(B)(2) of the NIRC.

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131 As with respect to this particular document, while assigned (and referred) to with marking, the actual document does not bear any marking at all.

132 G.R. No. 190102, 11 July 2012.

133 See also *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 9021, 29 June 2018.

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It is noted that COI, COCN and CRCE point to the person actually attesting to the veracity of the relevant documents to be Mr. Fawcett, a notary public of De Pinna Notaries (situated in London as shown by the "De Pinna Notaries" stamp appearing on the lower right portion of each page of the relevant documents). Whether a notary public can certify a public document under English laws is beyond the Court's judicial notice and hence, it becomes petitioner's burden to prove.

In this jurisdiction and under our 2004 Rules on Notarial Practice[134], a notary public is empowered to make copy certifications however, this is only limited to private documents. This limitation is made clear in Rule 132 Section 19, in relation to Section 24[135] of the Rules of Court, which both state:

> ...
> **Sec. 19.** *Classes of Documents.* — For the purpose of their presentation evidence, documents are either public or private.
>
> Public documents are:
>
> (a) **The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;**
>
> (b) Documents acknowledge before a notary public except last wills and testaments; and
>
> (c) Public records, kept in the Philippines, of private documents required by law to the entered therein.
>
> ...
> **Sec. 24.** *Proof of official record.* — The record of **public documents referred to in paragraph (a) of Section 19**, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by **the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody...**
> ...

[134] A.M. No. 02-8-13-SC, Rule IV, Section 1(5).
[135] Rules of Court, Rule 132, Section 19 in relation to Section 24; emphasis supplied.

x - x

The foregoing provisions clearly show the exclusion of notarized documents from the ambit of Rule 132, Section 24 of the Rules. Therefore, absent proof to the contrary, *the rule on processual presumption applies* wherein the identity or similarity of the foreign law to our own shall be presumed.[136] Granting that our laws do not authorize a notary to certify public documents of such character as the relevant documents, *the Court is bound to assume a similar restriction on the power of English notaries.* Moreover, the second part of Rule 132, Section 24 of the Rules expressly provide the manner of judicially proving foreign official records, to wit:

> ...
> ... If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.
> ...

Hence, an appropriate officer of the Philippine Embassy in England must directly certify the relevant documents or at the least attest to the foreign certifying officer's authority to authenticate or legalize the same. In this case, the Certification issued by the Philippine Embassy only endorsed Khan's authority to authenticate Fawcett's attestation without alluding to the relevant documents as shown by the following phrase:

> ...
> ...I verily believe that <u>A. KHAN</u> of the Foreign and Commonwealth Office before who the foregoing instrument has been authenticated is an officer duly authorized to legalize the document in the said Office and that the signature appearing thereon is genuine.
>
> That the contents of the foregoing document, the undersigned assumes no responsibility...[137]
> ...

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[136] *Continental Micronesia, Inc. v. Joseph Basso*, G.R. Nos. 178382-83, 23 September 2015.
[137] Exhibit "P-4".

A quick perusal of the apostille would further show that it similarly does not make any mention of the COI, COCN and CRCE. Accordingly, the apostille merely sought to certify Fawcett's attestation, while no separate certification for these documents were made by Khan himself. It must be remembered that an apostille is supposed to authenticate a public document for use abroad or in another country.

At this juncture, the Court notes that it is not ignorant of the Philippines' current inclusion in the Apostille Convention[138], effectively making the need for certifications from the Philippine embassy obsolete *except* for documents executed by diplomatic or consular agents and administrative documents dealing directly with commercial or customs operations. The Philippines only became a party to the Convention on 14 May 2019. Petitioner's apostille was executed prior to this date or on 7 February 2019; therefore, making the need for the Philippine Embassy's certification essential as apostilles were not accepted as means of authenticating foreign documents at the time. However, as previously pointed out, neither did the Philippine Embassy's certificate nor did the apostille certify or authenticate the relevant documents herein (COI, COCN and CRCE).

Lastly, it is propitious to point out that the CRCE itself bears the following worrisome disclaimer on its left bottom portion:

> ...
> The certificate records the result of a search of the information registered by the Registrar. This information derives from filings accepted in good faith without verification. For this reason the Registrar cannot guarantee that the information on the register is accurate or complete.
> ...

It is also noteworthy that the Service Agreements[139] that petitioner and FTL entered into are equally wanting in this regard. These agreements do not appear to be public documents as can be observed from the lack of any indication that the same were notarized. As a result, these agreements are only binding between the contracting

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138 Hague Apostille Convention (Convention of 05 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents).

139 Exhibits "P-5" to "P-5-C".

parties, FTEPP and FTL, and are therefore, self-serving and lacking in probative value. Regardless, even if these agreements were properly proven, these would only suffice in evincing the obligations between the parties with no bearing on the actual determination of FTL's non-residency.

In *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc. v. Commissioner of Internal Revenue*[140], the Supreme Court ruled:

> ...
> As correctly pointed out by the CTA Division, while Sitel's documentary evidence, which includes Certifications issued by the Securities and Exchange Commission and **Agreements between Sitel and its foreign clients, may have established that Sitel rendered services to foreign corporations in 2004 and received payments therefor through inward remittances, said documents failed to specifically prove that such foreign clients were doing business outside the Philippines** or have a continuity of commercial dealings outside the Philippines.[141]
> ...

In addition, the Supreme Court, in upholding the CTA *En Banc's* opinion in the above case, concluded that:

> ...
> ... [T]he Official Receipts, Intercompany Payment Requests, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements presented by Accenture merely substantiated the existence of sales, receipt of foreign currency payments, and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules, all of these were devoid of any evidence that the clients were doing business outside of the Philippines.[142]
> ...

In view of the foregoing pronouncements, the Court cannot likewise receive the invoices and bank statements presented by the petitioner as evidence of FTL's non-engagement in business within the

140 G.R. No. 201326, 08 February 2017.
141 Id.; emphasis supplied.
142 Id.

Philippines, even if the same meet the requirements of Sections 113, 222, and 223 of the NIRC[143], as these documents are inappropriate and insufficient to show that FTL is not doing business locally. Despite the

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[143] **Sec. 113.** *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

(A) *Invoicing Requirements.* - A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

(B) *Accounting Requirements.* - Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

. . .

Sec. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.*

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a preceding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) -year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

Sec. 223. *Suspension of Running of Statute of Limitations.* - The running of the Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, that, if the taxpayer informs the Commissioner of any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines.

admission of these documents during the FOE, the rule is clear that in order "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."[144]

Prescinding from the above, *it is the conclusion of the Court that petitioner was only able to prove that its client, FTL, is a foreign entity; without however showing that it is not engaged in business in the Philippines.* Even the NIRC makes a distinction between a "resident foreign corporation" and a "nonresident corporation" insomuch so that registration or incorporation as a foreign corporation does not automatically prove that it is not engaged in business in the Philippines.[145]

WHEREFORE, premises considered, this Petition for Review filed by Financial Times Electronic Publishing Philippines, Inc. is **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

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[144] *Sitel Philippines Corporation (formerly Clientlogic Phils., Inc. v. Commissioner of Internal Revenue*, supra at 140.

[145] *Accenture, Inc. v. Commissioner of Internal Revenue*, supra at 132.

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ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice