REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

M.E.T.R.O. (MANUFACTURE, EXPORT, TRADE, RESEARCH OFFICE) INCORPORATED, Petitioner,	**CTA EB NO. 1820** (CTA Case No. 8921)
- versus -	Present: **DEL ROSARIO,** *P.J.*, **CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 02 2019 4:20 p.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] ("Assailed Decision") dated January 03, 2018 and Resolution[2] ("Assailed Resolution") dated March 06, 2018 of the Court of Tax Appeals Second Division ("Second Division"), denying Petitioner's claim for the issuance of a Tax Credit Certificate amounting to Php1,981,905.48, representing its alleged excess and unutilized input value-added tax ("VAT") attributable to its zero-rated sales for taxable year 2012.

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1 Penned by Associate Justice Catherine T. Manahan, with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova concurring. Docket, pp. 1211-1224.

2 *Id.*, pp. 1311-1314.

The dispositive portion of the Assailed Decision reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.
>
> **SO ORDERED.**"[3]

Meanwhile, the Assailed Resolution provides:

> "**WHEREFORE**, the instant Motion for Reconsideration (Re: Decision dated 3 January 2018) is **DENIED**.
>
> **SO ORDERED.**"[4]

The Parties

Petitioner M.E.T.R.O. (Manufacture, Export, Trade, Research Office) Incorporated is a domestic corporation duly organized under Philippine law, with principal place of business at Building, La Fuerza Compound, Alabang-Zapote Road, Las Piñas City.[5]

Respondent is the duly appointed Commissioner of Internal Revenue ("CIR") vested under the law with authority to carry out all functions, duties and responsibilities of the Bureau of Internal Revenue.[6]

The Facts

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

> "On March 28, 2014, [P]etitioner filed its application for Tax Credit/Refund with the Revenue District Office (RDO) No. 053-A for the amount of Php2,185,195.22. The application was for input taxes from purchases made from January 1, 2012 to December 31, 2012.

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3 *Id.*, p. 1223.
4 *Id.*, p. 1314.
5 *Id.*, Decision, Facts, p. 1211.
6 *Id.*, Decision, Facts, p. 1212.

On June 2, 2014, [P]etitioner submitted certain documents in support of its Application for Tax Credit as requested by the BIR in several correspondences.

On October 8, 2014, [P]etitioner was furnished a copy of the decision from the BIR, partially denying [P]etitioner's Application for Tax Credit in the amount of Php1,981,905.48 and issuing the Tax Credit Certificate (TCC) for Php203,289.74 only.

On November 7, 2014, [P]etitioner filed the instant Petition for Review."[7]

The Ruling of the Second Division

On January 03, 2018, the Second Division promulgated the Assailed Decision denying the Petition for Review. The Court *a quo* found that Petitioner only submitted the Consularized Memorandum and Articles of Association of Kerson Investment Limited as proof that it was incorporated in Hong Kong. According to the Second Division, Petitioner failed to prove that Kerson Investment Limited (*i.e.,* the recipient of Petitioner's services) is doing business outside the Philippines which is the third requisite laid down in *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[8] in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the National Internal Revenue Code ("NIRC") of 1997, as amended. In other words, Petitioner failed to prove that its sales/receipts for the four quarters of taxable year 2012 were zero-rated.

Aggrieved, Petitioner filed *via* registered mail a "Motion for Reconsideration (Re: Decision dated 3 January 2018)"[9] on January 22, 2018, which the Second Division denied in the Assailed Resolution on March 06, 2018. The Court *a quo* stated that without the SEC Certification of Non-Registration of Corporation/Partnership, Petitioner was not able to prove that its client is a non-resident foreign corporation doing business outside the Philippines. Therefore, its motion for reconsideration should be denied.

The Proceedings in the Court of Tax Appeals En Banc

On March 27, 2018, Petitioner filed the present "Petition for Review"[10].

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7 *Id.*
8 G.R. No. 153205, January 22, 2007.
9 Docket, pp. 1265-1303.
10 Rollo, pp. 08-20. Record shows that Petitioner received the Assailed Resolution on March 12, 2018; Docket, p. 1310.

On April 18, 2018, the Court issued a Resolution[11] ordering Petitioner to submit a duplicate original or certified true copy of the Assailed Decision and the necessary Secretary's Certificate or Board Resolution authorizing Mr. Roberto Miguel D. Ramiro to act for and in behalf of Petitioner, within five (5) days from receipt.

In compliance thereto, Petitioner filed a "Partial Compliance with Motion for Extension"[12] and "Compliance"[13] on May 29, 2018 and May 30, 2018, respectively.

On July 04, 2018, the Court issued a Resolution[14] noting Petitioner's "Partial Compliance with Motion for Extension" and "Compliance", and ordering Respondent to comment on the Petition for Review within ten (10) days from receipt.

On October 15, 2018, a Records Verification Report[15] was issued stating that Respondent has failed to file its comment. Thus, on November 19, 2018, a Resolution[16] was issued giving due course to the Petition for Review, and ordering the parties to submit their respective memoranda within thirty (30) days from receipt.

Petitioner filed its Memorandum[17] on January 14, 2019.

In view of Respondent's failure to file his memorandum, on February 20, 2019, a Resolution[18] was issued submitting the instant case for decision.

Assignment of Errors

Petitioner raises the following grounds in support of its petition:

1. The Second Division erred in denying the Petition for Review due to insufficiency of evidence; and

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[11] *Id.*, pp. 65-67.
[12] *Id.*, pp. 68-73.
[13] *Id.*, pp. 90-94.
[14] *Id.*, pp. 98-100.
[15] *Id.*, p. 101.
[16] *Id.*, pp. 103-104.
[17] *Id.*, pp. 112-125.
[18] *Id.*, pp. 127-128.

2. The Court *En Banc* should give due credit to the remaining evidence presented by the Petitioner.[19]

Petitioner's Arguments

Petitioner mainly argues that it was able to prove that Kerson Investment Limited is a non-resident foreign corporation doing business outside the Philippines through the following documents:

1) Consularized Memorandum and Articles of Association of Kerson Investment Limited;
2) sales invoices;
3) 2012 quarterly VAT returns; and
4) Judicial Affidavit of Maurito C. Tarobal, appointed as the Independent Certified Public Accountant ("ICPA").

Moreover, the SEC Certificate of Non-Registration do not prove that the named entities are non-resident foreign corporation doing business outside the Philippines.

Lastly, as found by the ICPA, Petitioner should be entitled to a Tax Credit Certificate of at least Php136,392.54. Since the finding of the ICPA were also unrebutted by Respondent, the former's findings should be given full faith and credence.

The Ruling of the Court

Timeliness of Petition

The Court in Division issued the Assailed Resolution, denying Petitioner's "Motion for Reconsideration (Re: Decision dated 3 January 2018)", on March 06, 2018. Petitioner received said Resolution on March 12, 2018. Pursuant to

[19] *Id.*, p. 11.

Rule 4, Section 2(a)(1)[20] in relation to Rule 8, Section 3(b)[21] of the Revised Rules of the Court of Tax Appeals[22] (RRCTA), Petitioner had fifteen (15) days from date of receipt of the resolution or until March 27, 2018 within which to file its petition for review.

On March 27, 2018, Petitioner timely filed the present "Petition for Review". Hence, the Court *En Banc* validly acquired jurisdiction.

We now proceed to the merits of the case.

The Court in Division correctly denied Petitioner's claim for refund

The claim for refund of excess and unutilized input VAT is governed by Section 112[23] of NIRC of 1997, as amended, and this Court has time and again

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[20] **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

[21] **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)

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

[23] 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: Provided, followed the criteria contained therein as its basis for its conclusion on whether to grant or deny claims for refund of the same nature. We reiterate the requisites as follows:

1) That the claim for refund was filed within the prescriptive period;
2) The taxpayer is VAT registered;
3) That there must be zero-rated or effectively zero-rated sales;
4) That input taxes were incurred or paid;
5) That such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6) That the input taxes have not been applied against the output tax.

The Second Division found that Petitioner complied with the first and second requisites (*i.e.*, claim was filed within the prescriptive period and the taxpayer is VAT registered). Nonetheless, the court *a quo* ruled that Petitioner was not able to satisfy the third requirement.

Conversely, Petitioner posits that its sales to Kerson Investment Limited qualify as zero-rated sales.

We analyze.

Under Section 108(B)(2)[24] of the NIRC of 1997, as amended, to subject a sale of service to zero percent (0%) VAT rate, it must be "rendered to a person engaged in business outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services were performed" and the consideration therefor was "paid for in acceptable foreign

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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.

[24] SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties. —*

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(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:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(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.

currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas."

In the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[25], the Supreme Court enumerated the requisites in order for the supply of services to be VAT zero-rated under Section 108(B)(2):

1) the services by a VAT registered person must be other than processing, manufacturing or repacking of goods;

2) payment for such services must be in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas ("BSP") rules and regulations; and

3) the recipient of such services is doing business outside the Philippines.

There is no question as to the first and the second requirements are concerned. Petitioner satisfactorily complied with them. During the relevant period, the services Petitioner performed in the Philippines, like financial and management consulting services, design services, graphics marketing, phototyping, accounting, documentation, and invoicing services[26] were not the same category as "processing, manufacturing or repacking of goods." And for said services rendered, it received foreign currency duly accounted for in accordance with the rules and regulations of the BSP, as evidenced by official receipts[27] and bank credit memos[28].

With respect to the third requisite however, evidence reveal that Kerson Investment Limited cannot be considered as a non-resident foreign corporation doing business outside the Philippines.

As pointed out by the Court in Division, to be considered as non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** <u>SEC Certificate of Non-Registration of corporation/partnership</u>, which will show that the recipient of the service has no registered business in the Philippines **and** <u>certificate/articles of foreign incorporation/association</u>, which will prove that the recipient is indeed foreign.

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[25] G.R. No. 153205, January 22, 2007.
[26] Docket, Amended Articles of Incorporation, Exhibit "P-2", pp. 681-682; BIR Records, Service Agreement, Exhibit "R-1", pp. 113-117.
[27] Docket, Exhibits "P-6" to "P-6-26", pp. 694-707.
[28] BIR Records, pp. 75-97.

This ruling is consistent with previous decisions of this Court that these two documents must be presented.[29] The SEC Certificate of Non-Registration shows that the named entity is not registered in the Philippines, but does not prove that such entity is a non-resident foreign corporations doing business outside the Philippines; while proof of registration abroad only proves that said entity is incorporated/organized abroad, but does not establish that such entity is not doing business in the Philippines. One without the other is not sufficient.

In the case at bar, Petitioner did not present the SEC Certification of Non-Registration of Kerson Investment Limited. Hence, Petitioner failed to prove that its client is a non-resident foreign corporation doing business outside the Philippines.

Even so, Petitioner puts premium on the finding and recommendation of the Court-commissioned ICPA who allegedly examined and verified the documents it submitted in relation to its claim for Tax Credit Certificate. Having complied with all the requirements for said claim and considering that its documents have been examined by the ICPA, Petitioner avers that the relief it prayed for should be granted.

The Court is not persuaded.

The Court *En Banc* finds the need to stress that the Court in Division is not bound by the findings of the ICPA. The ICPA Report is a mere tool or guide to aid the Court in the resolution of the case, hence, the determination of the merit or the probative value of such Report is still within the province of the Court's discretion. The Court is free to adopt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.

Petitioner should be aware that actions for tax refund or credit, as in the instant case, are in the nature of a claim for tax exemption which is construed in *strictissimi juris* against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit. In the absence of a clear and convincing evidence in support of said claim, the right of the state to tax the petitioner prevails.[30]

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[29] Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd., CTA EB Case No. 1297 (CTA Case No. 8165), May 18, 2017, Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue, CTA EB Case No. 1302 (CTA Case No. 8165), May 18, 2017; Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd., CTA EB Case No. 1244 (CTA Case No. 8443), March 30, 2017, Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue, CTA EB Case No. 1345 (CTA Case No. 8443), March 30, 2017; Nokia (Philippines), Inc. v. Commissioner of Internal Revenue, CTA EB Case No. 1313 (CTA Case No. 8405), September 22, 2016.

[30] Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 222428, February 19, 2018.

Considering all these pronouncements, We find no cogent reason to reverse or modify the Assailed Decision and Assailed Resolution of the Court *a quo*. Respondent's claim for issuance of a Tax Credit Certificate amounting to Php1,981,905.48 is groundless and without foundation.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**. The Decision dated January 03, 2018 and the Resolution dated March 06, 2018 of the Second Division in CTA Case No. 8921 are **AFFIRMED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

Catherine T. Manahan
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