REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION
****

MARUBENI PHILIPPINES CORPORATION, Petitioner,	**C.T.A. CASE NO. 7223 (C.T.A. EB No. 799)** Members:
- versus -	**BAUTISTA,** and **CASANOVA.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** APR 21 2016 ; 11:27 a.m.

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AMENDED DECISION

CASANOVA, *J.*:

This is a remanded case involving the refund or the issuance of tax credit certificate in the amount of ₱134,662.95, representing unutilized excess input taxes attributable to zero-rated sales for the four taxable quarters of 2003, in favor of petitioner Marubeni Philippines Corporation, pursuant to the Decision dated December 15, 2009 and Decision June 19, 2013, issued by the First Division of this Court and the Court *En Banc*, respectively.

The facts of the case, as narrated in Our Decision dated December 15, 2009 remain undisputed.

On December 15, 2009, this Court promulgated the Decision which partially granted petitioner's Petition for Review in the amount of ₱134,662.95, representing petitioner's unutilized excess input taxes attributable to zero-rated sales for the four taxable quarters of 2003.

On March 14, 2011, an Amended Decision was promulgated which reversed and set aside this Court's Decision dated December 15, 2009 and dismissed petitioner's Petition for Review for having been prematurely filed.

The Court *En Banc* recognized in the said Decision the Supreme Court's ruling in *Commissioner of Internal Revenue vs. Aichi Forging Company of Asia, Inc.*[1]

On July 11, 2013, respondent filed a Motion for Reconsideration,[2] which was denied by the Court *En Banc* in the Resolution[3] dated December 2, 2013.

On February 3, 2014, respondent filed a Petition for Review on *Certiorari*[4] with the Supreme Court, which was subsequently denied in the Resolution dated July 23, 2014.

On September 15, 2014, the Supreme Court's Resolution[5] dated July 23, 2014 became final and executory.

Pursuant to the Court *En Banc's* Decision dated June 19, 2013 remanding the case to the Court in Division for the resolution on the merits of petitioner's Motion for Reconsideration filed on January 19, 2010 and Supplemental Motion for Reconsideration (With Motion for Leave of Court to Submit Supplemental Evidence) filed on February 22, 2010, the Special First Division of this Court issued a Resolution[6] dated June 15, 2015, setting the case for hearing for the reception of petitioner's additional documentary evidence. Petitioner, however, manifested that it will no longer present additional evidence in support of its claim for refund of its unutilized and excess input VAT for the four quarters of 2003[7]. Petitioner also submitted the case for decision of this Court.

[1] G.R No. 184823, October 6, 2010.
[2] Docket (Vol. II), pp. 1219-1234.
[3] Docket (Vol. II), pp. 1255-1262.
[4] Docket (Vol. II),pp. 1267-1284.
[5] Entry of Judgment, Docket (Vol. II), pp. 1330-1331.
[6] Docket (Vol. II), pp. 1346-1347.
[7] Manifestation (with Motion to Cancel Hearing) filed on September 2, 2015, Docket (Vol. II), pp. 1348-1352.

Respondent filed her Supplemental Memorandum on September 18, 2015 while petitioner merely adopted its Memorandum submitted in this case. Hence, the case was submitted for decision on October 6, 2015.

The sole issue for the resolution of this Court is whether petitioner is entitled to its claim for refund or issuance of tax credit certificate in the aggregate amount of ₱11,139,650.19, allegedly representing unutilized input VAT attributable to its zero-rated sales of goods and services for the four quarters of 2003.[8]

At the outset, it must be recalled that in the Resolution dated July 23, 2014, the Supreme Court has already decided with finality, the jurisdiction of this Court to entertain and resolve the Petition for Review filed by petitioner on April 21, 2005. The pertinent portion of the Supreme Court's Resolution reads:

> "In *San Roque*, this court affirmed with qualification the decision of its First Division in *Aichi*. It held that compliance with the 120-day and the 30-day periods under Section 112 Tax Code is mandatory and jurisdictional, save for those Value-Added Tax refund cases that were prematurely filed (i.e., before the lapse of the 120-day period) with the Court of Tax Appeals between December 10, 2003 (when BIR Ruling No. DA-489-03 was issued) and October 6, 2010 (promulgation of *Aichi*).
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> This court also declared that, following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, claims for refund or tax credit of excess input tax are governed only by Section 112 of the 1997 National Internal Revenue Code and not by Section 229.
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> *San Roque* filed a motion for reconsideration and supplemental motion for reconsideration in G.R. No. 187485, arguing for the prospective application of the 120-day and 30-day mandatory and jurisdictional periods, which the court denied with finality in a resolution promulgated on October 8, 2013. The same resolution

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[8] Issues to be Resolved, Supplemental Memorandum for the Respondent, Docket (Vol. II), p. 1357

also denied the motion for reconsideration filed by the Commissioner in G.R. No. 196113 assailing validity of BIR Ruling No. DA-489-03.

In the present case, respondent filed its petition for review with the Court of Tax Appeals on April 21, 2005, or only one day after it had filed its administrative claim with the Commissioner on April 20, 2005. Clearly, respondent failed to comply with 120-day waiting period, the time expressly given by law to the Commissioner to decide whether to grant or deny respondent's application for tax refund or credit. However, since respondent filed its judicial claim within the window created in *San Roque*, its petition for review filed before the Court of Tax Appeals is exempted from the strict application of the 120-day mandatory period.

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Nothing in the *San Roque* decision shows that Taganito argued in its pleadings that it relied on BIR Ruling No. DA-489-03 when it filed its judicial claim on February 14, 2007. Therefore, Taganito and respondent are similarly situated, and the rule created in *San Roque* must similarly apply to respondent. Requiring a statement of reliance on the BIR ruling in respondent's judicial claim, as petitioner argues, will be a violation of respondent's right to equal protection of the laws. Like Taganito, respondent *can* rely on BIR Ruling No. DA-489-03. Respondent is presumed to have relied on the BIR Ruling when it filed its judicial claim one day after filing its administrative claim on April 21, 2005. As we stated in *San Roque*:

> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, *all* taxpayers *can* rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional."

In light of the foregoing, this Court shall now proceed with the resolution on the merits of petitioner's Motion for Reconsideration filed on January 19, 2010 and Supplemental Motion for Reconsideration with Motion for Leave of Court to Submit Supplemental Evidence filed on February 22, 2010 in order to determine the correct amount of excess input VAT allowable for refund.

In its Motion for Reconsideration, petitioner presented the following arguments:

The presentation of the sales invoices, export declarations, bank credit advices, bank statements and mutual account ledgers is sufficient to prove that petitioner's export sales are qualified for VAT Zero-rating.

It must be recalled that in the Decision dated December 15, 2009, the Special First Division of this Court stated that any person claiming VAT zero-rated direct export sales must present at least three (3) types of documents, as follows: a) the sales invoice as proof of sale of goods; b) the export declaration and bill of lading or airway bill as proof of actual shipment of the goods from the Philippines to a foreign country; and c) bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services, pursuant to Section 106(A)(2)(a)(1) of the National Internal Revenue Code (NIRC) of 1997, in relation to Section 113(A) of the same Code and Section 4.108-1 of Revenue Regulations (RR) No. 7-95. Thus, the Court in Division held that only export sales supported by these documents shall qualify for VAT zero-rating under Section 106(A)(2)(a)(1) of the NIRC of 1997.

In its Motion for Reconsideration, petitioner initially argued that the additional requirement of the Court for the presentation of the airway bills or bills of lading to prove the actual shipment of the goods is not explicitly stated in the law, thus, an undue burden on the part of the petitioner.

However, in its Supplemental Motion for Reconsideration, petitioner moved for the Court's permission to enable it to present bills of lading to establish actual shipment of goods from the Philippines to Japan.

Following this, petitioner submitted a Supplemental Formal Offer of Evidence, accompanied by a Sworn Statement of Ms. Rosalyn P. Peret[9], petitioner's witness.

According to Ms. Peret, the total amount of petitioner's export/zero-rated sales covered by the bills of lading[10] is ₱101,939,439.49, as shown in the Summary of Export/Zero-Rated Sales for CY 2003[11] (Annex "H" of the ICPA report[12]).

However, it should be noted at this point that, the presentation of the bills of lading does not, in any way, alter the initial Decision of the Special First Division of this Court on December 15, 2009 because petitioner was not able to meet the requirements to prove its offsetting arrangement pursuant to Revenue Memorandum Circular (RMC) No. 42-2003[13], as will be discussed in the succeeding paragraphs.

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[9] Exhibit "BBBB"

[10] Exhibits "WWW-1" to "WWW-12", "XXX-1" to "XXX-12", "YYY-1" to "YYY-12" & "ZZZ-1" to "ZZZ-12"

[11] A14 of Exhibit "BBBB"

[12] Exhibit "RR-4"

[13] "*Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters*"

> **Q-8:** With the full liberalization of the BSP rules on foreign exchange and trade transactions (CB Circular No. 1389 dated April 13, 1993 enunciated in RMC No. 57-97), the BIR requirement for full documentation of proofs of inward remittances of export proceeds should no longer be enforced. Accordingly, what should be the acceptable documentary requirements in the processing of claims for TCC/refund, specifically on offsetting arrangements?
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> **A-8**: In the case of offsetting arrangements, the following documents should be required:
> a. Import documents which created liability accounts in favor of the foreign parent or affiliated company;
> b. Other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales;
> c. Evidence of proceeds of loans, in case the claimant has received loans or advances from the foreign company;
> d. Documents or correspondence regarding offsetting arrangements;
> e. Confirmation of the offsetting arrangements by the heads of the business organizations involved;
> f. Documents to prove actual export of goods;
> g. Documents to prove that the sales are zero-rated sales.

Petitioner has shown sufficient evidence to establish the existence of its foreign currency payables to Marubeni-Tokyo

In its Motion, petitioner pointed out that the Court in Division relied on the provisions of RMC No. 42-2003, dated July 15, 2003 in denying petitioner's export sales which were offset against its payables to Marubeni-Tokyo.

In its defense, petitioner cited the following findings of the ICPA[14] in proving the existence of payables to Marubeni-Tokyo, to wit:

"17. The Independent CPA verified and reported the following:

'We gathered the Mutual Account Ledger (Exhibit NNN-74 to NNN-114) of Marubeni and have noted the following:

- The following transactions with Marubeni-Tokyo are recorded in its Mutual Account ledger both in peso and in dollar amount, using the average foreign exchange rate per month from the Philippine Dealing System:

  a. Rubber protectors sold to Marubeni-Tokyo, which are purchased exclusively from Orion Rubber Manufacturing Corporation, **as evidenced by Marubeni's invoices.**

  b. Handling commission earned by Marubeni acting in a representative capacity as merchandise broker, indentor, commission, merchant and fact or agent of Marubeni-Tokyo or its affiliated companies. This is **supported by a service agreement** entered between Marubeni and Marubeni Tokyo on December 16, 1997 which remains in force unless terminated by either party.

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[14] Docket, p. 952; Exhibit "RR-4", p. 11.

c. Other commission from research and exploration services rendered by Marubeni for the projects of Marubeni-Tokyo, which is **supported by service agreement** per project or department unit of Marubeni-Tokyo.

d. Reimbursable expenses advanced by Marubeni, such as but not limited to expenses incurred during meetings with Marubeni-Tokyo clients, expenses of Marubeni-Tokyo employees visiting the country and travel advances of Mr. T. Goto.

Thus, offsetting of receivables and payables is done in Marubeni's Mutual Account Ledger. No official receipts are issued by Marubeni to Marubeni-Tokyo.

• Export sales amounting to Php101,939,439.49 (Annex H) are **supported by sales invoices** duly stamped with the phrase 'zero-rated sales', and export declarations."

Petitioner elaborated on the above report of the ICPA stating that:

"First, the import documents which created liability accounts in favor of the foreign parent or affiliated company is substantiated under 'rubber protectors sold to Marubeni-Tokyo, which are purchased exclusively from Orion Rubber Manufacturing Corporation, as evidenced by Petitioner's invoice.' In addition to this, the Independent CPA reported that the offsetting arrangement was in accordance with a service agreement between the Petitioner and Marubeni-Tokyo dated 17 December 1997, as described in Exhibits UUU-14 to UUU-17. Thus, petitioner submitted documents under letter 'a' of RMC No. 42-2003 as verified by the ICPA."

This Court disagrees with petitioner simply because petitioner misunderstood provision "a" under A-8 of RMC No. 42-2003.

The phrase "import documents which created liability accounts in favor of the foreign parent or affiliated company" means that the liability should be in favor or to the benefit of the foreign parent company or its affiliates, and therefore, at the expense or liability of petitioner.

From the foregoing, it can be gleaned that the main purpose of provision "A-8.a" of RMC No. 42-2003 is to prove that the offsetting arrangement is actually in place, by proving that petitioner has payables to the foreign parent or its affiliates against which petitioner's receivables (i.e., from its sale of goods and services to Marubeni-Tokyo) were offset. Hence, the sales invoices issued by petitioner to Marubeni-Tokyo are not the proper documents to prove the existence of its payables to Marubeni-Tokyo.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[15] Tax refunds are in the nature of tax exemptions. As such, these are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[16]

Petitioner proceeded to allege that it also complied with requirement "b" of RMC No. 42-2003 or "*other contracts with the foreign or affiliated company that brought about the liabilities which were offset against receivables from export sales*". Petitioner supported its argument with the Service Agreement that became effective on December 16, 1997 executed between petitioner and Marubeni-Tokyo pertaining to the agreement wherein petitioner would act in a representative capacity as merchandise broker, indentor, commission, merchant and factor agent of Marubeni-Tokyo or its affiliated companies. For the above services, petitioner received handling commissions from Marubeni-Tokyo.

Again, this Court finds petitioner's argument unmeritorious.

It must be noted that the Service Agreement[17] provides that petitioner will render services to Marubeni Tokyo or its affiliates and

[15] Citibank, N.A. vs. Court of Appeals and the Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997
[16] Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., G.R. No. 127105, June 25, 1999
[17] Exhibits "UUU-14" to "UUU-17"

through which petitioner will earn a cost-plus commission income, hence, a receivable on the part of petitioner.

Therefore, the same is not sufficient to support the requirement set forth under A-8.b of RMC 42-2003. It is clear that what is required is the presentation of other contracts that bring about liabilities which are offset against receivables from export sales. Clearly, the provision pertains to payables of petitioner owed to Marubeni Tokyo that will be offset against the receivables arising from its direct exports and commission income, and not the other way around.

Finally, petitioner also alleged that it was able to present documents that would establish the "*evidence of proceeds of loans in case the claimant has received loans or advances from the foreign company*" or requirement "c" under A-8 of the same RMC, through the Mutual Account Ledger containing the balances from the offsetting arrangement between petitioner and Marubeni-Tokyo. Petitioner averred that the said balances also contained the details of the reimbursable expenses advanced by petitioner in behalf of Marubeni Tokyo and affiliates.

According to the Court-commissioned ICPA, the balance at the end of the month shown in the Mutual Account Ledger is paid by Marubeni Tokyo on the following month in acceptable foreign currency proceeds which is in US dollars. The balance at the end of the month represents the amount after the offsetting of amounts of intercompany accounts receivables and payables of the two companies. Monthly Mutual Account Balance Remittance Advice is faxed to Marubeni indicating Marubeni Tokyo's remittance of the outstanding balance from the previous month.[18]

This Court cannot subscribe to the foregoing contentions.

It should be emphasized that the amount of foreign currency remittances was the net amount of all transactions with Marubeni Tokyo which included not only the receivables arising from export sales of goods and commission income but also advances and reimbursements made by petitioner for Marubeni Tokyo. Given that there were no transaction flows, nor supporting schedules and reconciliations presented, it was not possible for the Court to

[18] Exhibit "RR-4", p. 11

determine the amount of export sales and handling commission income that were actually paid for in foreign currency or its equivalent (i.e., offsetting). Hence, we find no probative value on the documents that were provided to this Court, and the burden of proof is not extinguished.

In summary, petitioner's direct export sales to Marubeni Tokyo in the amount of ₱101,939,439.49 does not qualify for VAT zero-rating for petitioner's failure to establish its offsetting arrangement with Marubeni Tokyo in compliance with the provisions of RMC No. 42-2003.

The 1997 Tax Code and jurisprudence are clear on the acceptable evidence to prove zero-rated sales of services in order for a refund of unutilized input tax can be granted

In the Decision dated December 15, 2009, the First Division of this Court denied VAT zero-rating on petitioner's collected commissions from non-residents due to its failure to comply with the submission of official receipts pursuant to Sections 113 and 237 in relation to Sections 106(A) and (D) and Sections 108(A) and (C) of the NIRC of 1997.

Petitioner, however, asserted that this Court should consider VAT invoices as sufficient documentary evidence to prove zero-rated sales of services following the Supreme Court's ruling in the case of **AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue,**[19] wherein it was held that Section 113 of the NIRC of 1997 (prior to its amendment under Republic Act No. 9337) does not make a distinction between a sales invoice and an official receipt. Thus, the Supreme Court found that the invoices presented by AT&T are sufficient to prove its zero-rated sales of services for the year 2002.

Petitioner's contentions are unmeritorious.

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[19] GR No. 182364, August 3, 2010.

In a similar case[20] involving the same company, AT&T, but covering taxable year 2003, the Supreme Court interpreted the same provisions of the NIRC of 1997 (prior to its amendment under RA No. 9337) in this wise:

> "For emphasis, even prior to the enactment of R.A. No. 9337, which clearly delineates the invoice and official receipt, our Tax Code has already made the distinction.
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> Section 113 of the NIRC of 1997, as amended is the focal provision, to wit:
>
>> 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: (Emphasis supplied)
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>> xxxx
>
> Although it appears under the above-quoted provision that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. The Court therefore cannot conclude that the general provision of Section 113 of the NIRC of 1997, as amended, intended that the invoice and official receipt can be used for either sale of goods or services, because there are specific provisions of the Tax Code which clearly delineates the difference between the two transactions.

[20] AT&T COMMUNICATIONS SERVICES PHILIPPINES, INC., petitioner, vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 185969, November 19, 2014

In this instance, Section 108 of the NIRC of 1997, as amended, provides:

> SEC. 108. ***Value-added Tax on Sale of Services*** *and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (C) Determination of the Tax — The tax shall be computed by multiplying the total amount indicated in the ***official receipt*** by one-eleventh (1/11). (Emphasis supplied)
>
> Comparatively, Section 106 of the same Code covers sale of goods, thus:
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> SEC. 106. ***Value-added Tax on Sale of Goods or Properties.*** —
>
> xxxx
>
> (D) Determination of the Tax. — The tax shall be computed by multiplying the total amount indicated in the invoice by one-eleventh (1/11). (Emphasis supplied)

Apparently, the construction of the statute shows that the legislature intended to distinguish the use of an invoice from an official receipt. It is more logical therefore to conclude that subsections of a statute under the same heading should be construed as having relevance to its heading. The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax but also with respect to substantiation requirements. Having been grouped under Section 108, its subparagraphs, (A) to (C), and Section 106, its subparagraphs (A) to (D), have significant relations with each other.

Legislative intent must be ascertained from a consideration of the statute as a whole and not of an isolated part or a particular provision alone. This is a cardinal rule in statutory construction. For taken in the abstract, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Thus, an apparently general provision may have a limited application if viewed together with the other provisions.

Settled is the rule that every part of the statute must be considered with the other parts. Accordingly, the whole of Section 108 should be read in conjunction with Sections 113 and 237 so as to give life to all the provisions intended for the sale of services. There is no conflict between the provisions of the law that cover sale of services that are subject to zero rated sales; thus, it should be read altogether to reveal the true legislative intent."

Therefore, as aptly held by the First Division of this Court in its December 15, 2009 Decision, without VAT official receipts, petitioner's reported collected commissions from non-residents in the amount of ₱39,475,267.97[21] and commissions from PEZA entities in the amount of ₱687,626.92[22] cannot qualify for VAT zero-rating.

Petitioner established that the recipients of the services rendered were entities doing business outside the Philippines

In the December 15, 2009 Decision, the First Division of this Court ruled that one of the requisites in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997 (prior to its amendment under RA 9337) is that the recipient of the services is doing business outside the Philippines citing *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[23] as basis.

To contradict this, petitioner averred that the circumstances surrounding *Burmeister* is not the same as the facts of this instant

[21] Docket, p. 676.
[22] Docket, p. 680.
[23] G.R. No. 153205, January 22, 2007

case. One of which, is that in *Burmeister* case, the recipient of the services is the consortium (for which petitioner is a subcontractor), which is doing business within the Philippines because it had 15-year contract to operate and maintain National Power Corporation's power barges in Mindanao.

While, in the instant case, petitioner alleged that no such proof that the recipient of its services is not doing business outside, but within, the Philippines. Accordingly, the service agreements constituting petitioner as its agent in the Philippines would establish Marubeni-Tokyo's disinterest in having a progressive pursuit of commercial dealings in the Philippines.

Also, petitioner contended that the added requirement for services to be rendered to a person engaged in business conducted outside the Philippines, or to a non-resident person not engaged in business who is outside the Philippines when the services were rendered, became effective only on July 1, 2005 (RA 9337). Since the Petition for Review was filed on April 21, 2005, it is allegedly apparent that the additional condition should not apply to petitioner's case.

This Court cannot subscribe to petitioner's assertions.

The Supreme Court in *Burmeister* unequivocably ruled that another essential condition for qualification to zero-rating under Section 102(b)(2) of the NIRC of 1997, as amended, is that the recipient of such services is doing business outside the Philippines. Section 102(b)(2) cited by the Supreme Court in Burmeister carries the same provisions on zero-rating of services under Section 108(B)(2) of the NIRC of 1997, as amended, the law applicable in the present case.

In its Motion, petitioner also argued that conceding there is a need to establish that petitioner's non-resident customers are not doing business in the Philippines, the Court should have considered the provisions of the Foreign Investments Act of 1991 (the "Act"). The Act provides a statutory definition for the term "doing business". Section 3 of the said Act states:

"SECTION 3. *Definitions.* – As used in this Act:

xxx xxx xxx

(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 totalling 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.**[24]

Furthermore, petitioner cited Rule I, Section 1(f) of the Implementing Rules and Regulations (IRR) of the Act, which enumerates acts that do not constitute doing business in the Philippines, as follows:

"(f) 'Doing business' shall include soliciting orders, service contracts, opening offices, whether liaison offices or branches; appointing representatives or distributors, operating under full control of the foreign corporation, domiciled in the Philippines or who in any calendar year stay in the country for a period totalling 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

[24] Republic Act (R.A.) No. 7042, June 13, 1991 (emphasis supplied by petitioner)

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. <u>The following acts shall not be deemed 'doing business' in the Philippines:</u>

1. 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;

2. Having a nominee director or officer to represent its interests in such corporation;

3. Appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account;

4. The publication of a general advertisement through any print or broadcast media;

5. Maintaining a stock of goods in the Philippines solely for the purpose of having the same processed by another entity in the Philippines;

6. Consignment by a foreign entity of equipment with a local company to be used in the processing of products for export;

7. Collecting information in the Philippines; and

8. Performing services auxiliary to an existing isolated contract of sale which are not on a continuing basis, such as installing in the Philippines machinery it has manufactured or exported to the Philippines, servicing the same, training domestic workers to operate it, and similar incidental services.

Based on the above, petitioner contended that appointing a representative domiciled in the Philippines to transact business in the representative's or distributor's own name and account is deemed as not doing business in the Philippines. Logically, therefore, the act of Marubeni Tokyo in constituting petitioner as its agent, allegedly falls squarely with the aforecited provisions.

Even granting that petitioner is correct in this argument, petitioner still failed to establish that the foreign currency remittances were actually representative of the amount of direct export sales and sales commissions earned from export sales and services rendered to Marubeni-Tokyo and affiliates during CY 2003.

WHEREFORE, premises considered, the Decision dated December 15, 2009 issued by the Special First Division of this Court, ordering the refund or issuance of tax credit certificate in favor of petitioner in the amount of **ONE HUNDRED THIRTY FOUR THOUSAND SIX HUNDRED SIXTY TWO PESOS and 95/100 (₱134,662.95),** representing petitioner's unutilized excess input taxes attributable to its zero-rated sales for the four taxable quarters of 2003, is **AFFIRMED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

I CONCUR:

LOVELL R. BAUTISTA
Associate Justice

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.

LOVELL R. BAUTISTA
Associate Justice

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