REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* No. 2654
(CTA Case No. 10011)

-versus-

ATLASSIAN PHILIPPINES, INC.,
Respondent.

x- -x

ATLASSIAN PHILIPPINES, INC.,
Petitioner,

CTA *EB* No. 2664
(CTA Case No. 10011)

Present:

DEL ROSARIO, *P.J.,*
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO,
CUI-DAVID,
FERRER-FLORES, *and*
ANGELES, *JJ.*

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 27 2024 2:40pm

x- -x

R E S O L U T I O N

MANAHAN, *J.*:

For resolution of the Court *En Banc* are as follows:

1. *Motion for Reconsideration (of the Decision dated 19*[1] *February 2024)* filed by the Commissioner of Internal Revenue (CIR) via accredited courier on March 7, 2024

[1] It should be 16 February 2024, Docket, CTA *EB* No. 2654, p. 183.

with Atlassian Philippines, Inc. (API)'s *Comment (To Petitioner's Motion for Reconsideration in CTA Case EB No. 2654)* filed via accredited courier on April 8, 2024; and

2. *Motion for Reconsideration (Decision in CTA Case EB No. 2664)* filed by API via accredited courier on March 11, 2024 without the comment of the CIR.[2]

Both parties move for the reconsideration of the Decision of the Court *En Banc*[3] promulgated on February 16, 2024, quoted as follows:

> "**WHEREFORE**, in light of the foregoing considerations, the CIR's *Petition for Review* (CTA *EB* No. 2654) is **DENIED**, for lack of merit; while API's *Petition for Review* (CTA EB No. 2664) is **PARTIALLY GRANTED**.
>
> Accordingly, the Court in Division's Decision dated October 6, 2021 in CTA Case No. 10011 is hereby **MODIFIED** to read as follows:
>
> "**WHEREFORE**, premises considered, the present *Petition for Review* filed by petitioner Atlassian Philippines, Inc. on 18 January 2019 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** in favor or petitioner the reduced amount of **P6,683,611.66** representing unutilized input VAT attributable to its zero-rated sales for the 1st, 2nd, 3rd and 4th quarters for fiscal year ending 30 June 2017."
>
> **SO ORDERED**."

The CIR's Motion for Reconsideration

The CIR insists that API's sole client and recipient of its services, Atlassian Pty Ltd (APL), is one and the same legal entity such that the latter cannot claim that it is not doing business in the Philippines. He cites the testimony of API's witness during her cross-examination on July 22, 2019 where she allegedly declared that API (as the Philippine entity) was established solely for the purpose of rendering service to APL (foreign-based entity). The CIR goes on to state that out of the 175,000 outstanding shares of API, APL owns 174,000 thereof which is equal to ninety four percent (94%) of the total

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[2] Records Verification Report dated April 30, 2024.
[3] Consolidated Case Nos. 2654 & 2664.

outstanding shares of API, thereby strengthening his assertion that both entities cannot be treated as separate legal entities. Also, respondent points out that there is nothing in the records to show that the services were rendered by API to APL, nor is it apparent that said services were performed in the Philippines. He alleges that the Service Agreement does not categorically state that the contracted services shall be performed by API only in the Philippines.

The CIR further avers that API failed to prove that it had big ticket purchases in the four (4) quarters of Fiscal Year (FY) ending June 30, 2017 pursuant to the requirements prescribed under Revenue Memorandum Order (RMO) No. 16-2007 which requires taxpayers to present proof of payment *other than* invoices and receipts.

Lastly, the CIR maintains that the Court should have dismissed the claim for refund on the basis of the documents that API submitted in the administrative level and that the lack thereof cannot be cured by submitting or filing the lacking documents with the Court, citing the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Univation Motor Philippines.*[4]

In its comment to the CIR's *Motion for Reconsideration*, API controverts the theory of the CIR and counters that a subsidiary does not lose its separate personality by being a wholly-owned corporation of its parent company. The fact that a foreign corporation owns 100% of the stocks of a domestic corporation does not necessarily give rise to the conclusion that said foreign corporation is doing business in the Philippines.

API also maintains that it was able to present evidence that its services were rendered in the Philippines and even if the services were rendered outside of the Philippines, it is with more reason that the transaction is subject to zero percent value-added tax (VAT) because the performance and consumption of such services both occurred outside of the Philippines.

As regards its big-ticket purchases, petitioner alleges that the documentary proof cited by the CIR is not supported by any provision of the 1997 National Internal Revenue Code, as

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[4] G.R. No. 231581, April 10, 2019.

amended, and that such can be sufficiently proven by VAT invoices and official receipts.

API's Motion for Reconsideration

API argues against the Court's alleged conclusion that the input VAT subject of the claim for refund does not fall within the purview of the constitutional right to due process as it is still not considered its property until it is able to show its entitlement thereto.

API likewise disagrees with the Court's disallowance of the input taxes in the amount of Php229,652.51 (which is part of the Php326,081.03) as falling outside the period of the claim for refund. Contrary to the ruling of the Court, API asserts that the proper period to consider should be the period of payment for the services which corresponds to the time of withholding of the VAT and not the filing of BIR Form No. 1600 (Monthly Return of Value-Added Tax and Other Percentage Taxes Withheld).

RULING OF THE COURT

We shall first resolve the timeliness of the filing of both Motions for Reconsideration.

On February 16, 2024, the Court issued a Decision in the above-captioned consolidated cases, partially granting API's Petition for Review while denying the CIR's Petition for Review. A copy of the Decision was received by API on February 23, 2024 and by the CIR on February 21, 2024.[5] Pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party dissatisfied with a decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> **Rule 15**
> **Motion for Reconsideration or New Trial**
>
> **Section 1**. *Who may and when to file motion.* – Any aggrieved party may seek a reconsideration or new trial of any decision, resolution or order of the Court by filing a motion for reconsideration or new trial for fifteen days

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[5] *EB* Docket of CTA *EB* No. 2654, page 182.

> from the date of receipt of notice of the decision, resolution or order of the Court in question.

Counted from receipt of the Decision, API had until March 9, 2024 to file its Motion for Reconsideration.

On the other hand, the CIR had until March 7, 2024 to file his Motion for Reconsideration.

Records show that API filed its Motion for Reconsideration on March 11, 2024 while CIR filed his Motion for Reconsideration on March 7, 2024.

Based on the afore-quoted provisions, both motions are deemed timely filed.[6]

We now proceed to rule on the merits of the parties' Motions for Reconsideration.

Ruling on CIR's Motion for Reconsideration

We find the arguments of the CIR in his Motion for Reconsideration to be without merit.

The theory that API and APL cannot be considered as separate entities because the former was established solely to render services to the latter and that the foreign entity owns practically all of the outstanding shares of the domestic corporation API, is without legal basis and runs counter to the nature of a subsidiary which is an entity established and registered with the Securities and Exchange Commission (SEC) as a domestic corporation and has a personality separate and distinct from that of its shareholders. The Supreme Court has already firmly ruled that "the mere fact that a corporation owns all of the stocks of another corporation, taken alone, is not sufficient to justify their being treated as one entity."[7] As stated clearly in the assailed Decision, "the mere fact that APL owns 99.4% of API's authorized capital stock is not of itself sufficient ground for disregarding the separate corporate personalities of APL and API."

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[6] March 9, 2024 falling on a Saturday.
[7] *MR Holdings, Ltd. vs. Sheriff Carlos Bajar, et al.*, G.R. No. 138104, April 11, 2002.

As to the alleged unsubstantiated "big ticket purchases" of API, the Court likewise finds this to be without legal basis and agrees with API that there is nothing in the 1997 NIRC, as amended, that supports the assertion of the CIR that invoices and receipts are not sufficient to validate big ticket purchases. It is clear in Section 110(A)(1) of the 1997 NIRC, as amended, that any input tax evidenced by a VAT invoice or official receipt shall be creditable against output tax.[8]

Lastly, the Court disagrees with the assertion of the CIR that the Court is confined to reviewing the documents API submitted with the BIR and should deny the claim for refund if the said documents are insufficient. Such statement runs counter to the principle laid down in the case of *Commissioner of Internal Revenue vs. Univation Motors*,[9] (*Univation* case) which was even cited by the CIR in his Motion for Reconsideration. In the *Univation* case, the Supreme Court categorically ruled that "that cases filed in the CTA are litigated *de novo* and as such, respondent should prove every minute aspect of its case by formally offering and submitting to the CTA all evidence required for the successful prosecution of its administrative claim," which can even include those documents which may not have been submitted to the CIR.[10]

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[8] "SEC. 110. *Tax Credits.* –

(A) *Creditable Input Tax.* –

(1) **Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax**:

(a) Purchase or importation of goods:

(i) For sale; or

(ii) For conversion into or intended to form part of a finished product for sale including packaging materials; or

(iii) For use as supplies in the course of business; or

(iv) For use as materials supplied in the sale of service; or

(v) For use in trade or business for which deduction for depreciation or amortization is allowed under this Code." (*Emphasis supplied*)

[9] *Ibid.*

[10] *Ibid.*

It is clear from the afore-cited ruling that the Court is not restricted to a determination of whether or not the documents submitted by the taxpayer to the BIR are sufficient (or insufficient) for entitlement to the claim for refund but may consider and evaluate other documents offered during trial.

Ruling on API's Motion for Reconsideration

We find that API's arguments in its *Motion for Reconsideration* are not novel and that they have already been adequately addressed, discussed and resolved in the assailed Decision, *e.g.*, due process and proper allocation of input taxes but the Court would like to highlight our ruling that API may not claim the input VAT supported by BIR Form No. 1600 for the month of June 2017, because the remittance return itself was filed in the subsequent month.

We subscribe to the conclusion of the Second Division of this Court in the Decision dated October 6, 2021[11] that Sec. 4.114-2 of Revenue Regulations (RR) No. 16-2005, as amended, provides that the withholding VAT may be claimed as input tax credit in the month such withholding VAT is **withheld and remitted** to the BIR supported by BIR Form No. 1600. Considering that the June 2017 withholding VAT return of API was remitted to the BIR on July 11, 2017, this was deemed outside of the period of the claim, *i.e.*, July 1, 2016 to June 30, 2017.

In view of all the foregoing, the Court finds no cogent reason to reverse or modify the Court's Decision dated February 16, 2024.

WHEREFORE, premises considered, the CIR's *Motion for Reconsideration (of the Decision dated 19*[12] *February 2024)* and API's *Motion for Reconsideration (Decision in CTA Case EB No. 2664)* are **DENIED** for lack of merit.

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[11] *Atlassian Philippines, Inc. vs. CIR*, CTA Case No. 10011.
[12] See Note 1.

Accordingly, the Decision of the Court *En Banc* in the above-captioned consolidated cases dated February 16, 2024, is hereby **AFFIRMED**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

(on official business)
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

HENRY S. ANGELES
Associate Justice