Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MANULIFE DATA SERVICES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8701

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
COTANGCO-MANALASTAS, *JJ.*

Promulgated:
FEB 2 2 2016 10:55 AM

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RESOLUTION

CASANOVA, *J.*:

This resolves:

1. Petitioner's Motion for Partial Reconsideration (Re: Decision of 28 October 2015), filed on November 10, 2015, without respondent's comment thereto, as per Records Verification dated December 14, 2015; and

2. Respondent's Motion for Partial Reconsideration, filed on November 11, 2015, with petitioner's Comment (To Respondent's Motion for Partial Reconsideration Dated 28 October 2015) filed on December 11, 2015.

Both parties seek reconsideration of the Decision (the "Assailed Decision") dated October 28, 2015, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favour of petitioner in the reduced amount of **SIX MILLION TWO HUNDRED FORTY THREE THOUSAND TWO HUNDRED**

TWENTY and 30/100 PESOS (₱6,243,220.30), representing petitioner's unutilized excess input VAT attributable to its zero-rated sales/receipts for the four (4) taxable quarters of CY 2011.

SO ORDERED."

Petitioner, in its Motion, proffers the following arguments:

I. Petitioner Erred in Not Including the Manufacturer's Life Insurance Company's in the Valid Zero-Rated Receipts to be Divided by the Zero-Rated Receipts per VAT Returns to Come Up with the Rate of Substantiated Receipts per Quarter which was then Multiplied with the Excess Input VAT to Arrive at the Excess Input VAT Attributable to Valid Zero-Rated Receipts.

II. Petitioner's Sale of Zero-rated Services to MLIC Qualify as Zero-Rated Sales as this is a Direct Transaction Between Petitioner & MLIC Without the Intervention of MLIC's Philippine Branch, following the Marubeni Decision.

III. By Adding Manufacturer's Life Insurance Company's Valid Zero-Rated Receipts as Found by the Independent CPA in the Valid Zero-Rated Receipts to be Divided by the Zero-Rated Receipts per VAT Returns, the Rate of Substantiated Receipts per Quarter will substantially Increase and Likewise the Excess Input VAT Attributable to Valid Zero-Rated Receipts.

Petitioner contends that it was not able to submit SEC Certificate of Non-Registration for Manufacturer's Life Insurance Company ("MLIC") because MLIC has a Philippine branch. However, it submitted complete proofs of incorporation of MLIC Canadian documents such as:

a. Exhibit "P-31" - Letters Patent issued to "The Manufacturer's Life Insurance Company/La Compagnie d'Assurance-Vie Manufacturers" (with Appendix to Letters Patent);

b. Exhibit "P-31-a" - Letters Patent of Amalgamation of "MFC Insurance Company Limited" and "The Manufacturers Life Insurance Company" into "The

Manufacturers Life Insurance Company"/La Compagnie d'Assurance-Vie Manufacturers";

c. Exhibit "P-31-b" – Certificate of Confirmation issued in favor of "The Manufacturer's Life Insurance Company"/La Compagnie d'Assurance-Vie Manufacturers";

d. Exhibit "P-31-c" – Certificate of Good Standing issued in favor of "The Manufacturer's Life Insurance Company".

Petitioner further contends that its sale of services to MLIC, which was paid for in foreign currency and inwardly remitted to the Philippines, qualify as zero-rated sales as this is a direct transaction between petitioner and MLIC without the intervention of MLIC-Philippines branch.

Thus, petitioner concludes, following the Supreme Court ruling in the Marubeni case[1], petitioner's sales of services to MLIC may be considered as zero-rated sales.

We find petitioner's Motion for Partial Reconsideration (Re: Decision of 28 October 2015) bereft of merit.

We reiterate that, under the established jurisprudence in the Burmeister and Wain case[2], in order for the supply of services to be considered as VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be met, viz:

1. the services must be other than processing, manufacturing or repacking of goods;

2. the recipient of such services is doing business outside the Philippines; and

3. payment for such services must be in acceptable foreign currency with the BSP rules and regulations.

[1] Marubeni Corporation (formerly Marubeni-Iida Co., Ltd.) vs. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. 76573, September 14, 1989

[2] Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., G.R. No. 153205, January 22, 2007

While, undeniably, the first and third requisites had been met, compliance with the second requisite, i.e. "the recipient of such services is doing business outside the Philippines" is, however, wanting.

As we have stated in the Assailed Decision, in order to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by <u>both</u> SEC Certificate of non-registration of company and proof of incorporation or registration in a foreign country.

While petitioner, admittedly, was able to submit proofs of incorporation/registration of MLIC in Canada, it, however, by its own admission in its Motion, was not able to submit a SEC Certificate of Non-Registration for MLIC because the latter has a Philippine branch.[3]

Petitioner instead insists that the ruling in the Marubeni case is applicable to its case as it renders its services directly to the mother company in Canada without any services provided to MLIC-Philippine branch. Thus, the said sales of services by petitioner to MLIC in Canada qualify as zero-rated sales.

Petitioner's reliance on the Marubeni case is misplaced.

The ruling in the Marubeni case cannot be applied in the instant case as the factual antecedents of these two are different.

The Marubeni case deals with a claim for refund or tax credit of overpayment of branch profit remittance tax withheld from dividends paid by Atlantic Gulf & Pacific Co. of Manila (AG & P) to Marubeni, as shareholder.

The case now before Us, on the other hand, involves a claim for refund/issuance of tax credit certificate representing unutilized input VAT attributable to zero-rated sales.

Thus, the Marubeni case not being applicable, and since petitioner is claiming for tax refund/issuance of tax credit certificate for its allegedly zero-rated sales under Section 108(B), the Burmeister case and, more recently, the Accenture, Inc. vs. Commissioner of Internal

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[3] II.9, Motion for Partial Reconsideration (Re: Decision of 28 October 2015, Docket (Vol. II), p. 973

Revenue[4] (Accenture case) find application in the case at bench since these two cases bear the interpretation and application of Section 108(B)(2) of the 1997 National Internal Revenue Code. Pursuant, therefore, to the doctrine of *stare decisis et non quieta movere* the interpretation of the Supreme Court on the said provision must, perforce, be applied to the instant case.

In Chinese Young Men's Christian Association of the Philippine Islands, doing business under the name of Manila Downtown YMCA vs. Remington Steel Corporation[5], the Supreme Court stated, thus:

> "xxx. Under the doctrine, when the Supreme Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same. The doctrine of *stare decisis* is based upon the legal principle or rule involved and not upon judgment which results therefrom. In this particular sense *stare decisis* differs from *res judicata* which is based upon the judgment.
>
> The doctrine of *stare decisis* is one of policy grounded on the necessity for securing certainty and stability of judicial decisions, thus:
>
> 'Time and again, the court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere.* Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided

[4] G.R. No. 190102, July 11, 2012
[5] G.R. No. 159422, March 28, 2008

by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue'."

Thus, since petitioner failed to meet/comply with one of the requisites for a foreign corporation to be considered as a non-resident foreign corporation doing business outside the Philippines, petitioner's sales of services to MLIC, the latter having a Philippine branch, cannot quality for VAT zero-rating.

Accordingly, petitioner's Motion for Partial Reconsideration (Re: Decision of 28 October 2015), is denied for lack of merit.

We now proceed to resolve respondent's Motion for Partial Reconsideration.

Respondent, in her Motion, argues that petitioner's claim for refund should be completely denied for failure of petitioner to prove the factual and legal basis for its claim.

Respondent further points out that petitioner failed to present the originals of the following documents, for comparison, viz: Exhibits "P-2", "P-57", "P-58", "P-59", "P-60", "P-2206", "P-2217", "P-2249" and "P-2276". That, petitioner, likewise, failed to present in evidence the following documents, viz: Exhibits "P-32", "P-33", "P-34", "P-2327", "P-1200b", "P-1211b", "P-1219b", "P-1482b", "P-1504b", "P-1512b", "P-1797b". "P-1803b", "P-1783b", "P-2093b", "P-2096b", "P-2115b" and "P-2122b". And, lastly, that petitioner failed to prove that it does have a refundable or creditable input VAT and the same has not been applied against its output VAT liabilities-information which are supposed to be reflected in petitioner's VAT return pursuant to Section 112(A) of the 1997 National Internal Revenue Code, as amended.

Petitioner, in its Comment (To Respondent's Motion for Partial Reconsideration Dated October 28, 2015), counters respondent arguments as follows: that, contrary to respondent's arguments, the Honorable Second Division already took all these exhibits into consideration when it rendered its Decision dated 28 October 2015; that Exhibit "P-2" has no bearing on the Decision since the Honorable Second Division only considered four (4) client-affiliates of petitioner as non-resident foreign corporation doing business outside the Philippines.

We find respondent's Motion unmeritorious.

It bears to note that in the Resolution dated July 24, 2014 of this Court, all the documents/exhibits enumerated by respondent in her Motion were denied admission. We quote the pertinent portion of Our Resolution, thus:

> "However, this Court DENIES the admission of the following:
>
> (a) Exhibits '**P-2, P-5, P-58, P-59, P-60** and **P-2206 – P-2217**' for failure of petitioner to submit the originals for comparison;
>
> (b) Exhibits '**P-32, P-33, P-34, P-2327, P-1200b, P-1211b, P-1219b, P-1482b, P-1504b, P-1512b, P-1783b, P-1797b, P-1803b, P-1783b, P-2093b, P-2096b, P-2115b** and **P-2122b**' for not being found in the records of this case; and
>
> (c) Exhibits '**P-2249 – P-2276**' for not being identified during trial and for failure of petitioner to submit the originals for comparison."

Accordingly, respondent's arguments regarding these documents are rendered moot and academic.

As to all the other issues raised by respondent in her Motion, this Court finds the same to have been thoroughly evaluated, discussed and resolved in the Assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Partial Reconsideration (Re: Decision of 28 October 2015), and respondent's Motion for Partial Reconsideration are **BOTH** hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice