REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

NIPPON EXPRESS PHILIPPINES CORPORATION, Petitioner,	**CTA CASE NO. 9873**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 20 2021 3:38 pm

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RESOLUTION

CASTAÑEDA, JR., J.:

Before this Court is petitioner's **Motion for Reconsideration (Re: Decision dated 27 July 2020)** filed on September 14, 2020, with respondent's **Opposition (Re: Motion for Reconsideration)** filed on October 16, 2020.

On July 27, 2020, this Court promulgated a Decision denying petitioner's claim for refund of unutilized input tax for failing to sufficiently establish that it was engaged in zero-rated sales or effectively zero-rated sales during taxable year 2016, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in light of the foregoing, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO OREDERED**."

In its Motion, petitioner assails the above Decision by asserting that the Court erred in the outright denial of its claim for refund. Petitioner claims that it is a matter of record that it is principally engaged in the business of providing freight forwarding services for the combined transportation by air, sea, or land from one point of receipt to a point of destination based on its corresponding articles of incorporation. As such, its income as freight forwarder is primarily generated from the sale of services made to the Philippine Economic Zone Authority (PEZA)-registered entities, thereby, making its sales as zero-rated/effectively zero-rated. Petitioner therefore surmises that there should be no ambiguity about the nature of its services as a freight forwarder (a service other than processing, manufacturing, or repacking of goods), which squarely falls within the purview of Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Moreover, petitioner further assails the Court's reliance on the case of *Accenture v. Commissioner of Internal Revenue ("Accenture case"* hereafter for brevity),[1] arguing that the same is not entirely on all fours with the present case since the factual circumstances therein are different from petitioner's claim of tax refund. Petitioner continues that considering the great pains it underwent to substantiate its claim for refund – by submitting the relevant documentation/s required under the *Revised Checklist of Mandatory Requirements for Claims for Value-Added Tax (VAT) Refund* – petitioner questions the applicability of the ruling in *Accenture case* in the present case on the ground that Revenue Memorandum Circular (RMC) No. 17-2018,[2] which includes the Securities and Exchange Commission (SEC)'s Certification of Non-Registration as a requirement for claims for VAT refund, was implemented only on February 27, 2018 or several years after the ruling in the Accenture case was promulgated on July 11, 2012

Lastly, petitioner avers that the Court completely overlooked the authoritative findings of the Independent Certified Public Accountant (ICPA), Mr. Clark Joseph C. Babor, who was expressly commissioned to conduct an exhaustive evaluation of the subject claim as an officer of the court. Petitioner also emphasizes the court-commissioner ICPA's expert opinion confirming petitioner's

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[1] G.R. No. 190102, July 11, 2012.

[2] "SUBJECT: Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN)", dated February 27, 2018.

entitlement to a tax refund based on the totality of transactions and documents examined in the premises in accordance with Section 108(B)(2) and Section 108(B)(3) in relation to Section 112(A) of the NIRC, as amended.

On the other hand, in his Opposition, respondent reiterates that a claim for tax refund partakes of the nature of a tax exemption, as such it is therefore strictly construed against the taxpayer claimant. He insists that petitioner must prove every minute aspect of its claim for refund since it is incumbent upon petitioner to prove not only its entitlement to the grant of the claim under substantive law, but also its compliance with all the documentary and evidentiary requirements provided by the National Internal Revenue Code (NIRC), as well as by the revenue regulations implementing them.

The Court finds petitioner's Motion for Reconsideration bereft of merit.

Verily, the Court cited the *Accenture case* simply to emphasize the ruling of the Supreme Court that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation." In fact, the said case was cited in correlation to the case of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[3] wherein it was further required that there must not be any indication that the recipient of the services is doing business in the Philippines. To reiterate, it was held in the *Accenture case* that, to wit:

> "The **evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines.** After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:
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> 'SEC. 22. Definitions - When used in this Title:
>
> x x x

[3] G.R. No. 153205, January 22, 2007.

> (H) The term 'resident foreign corporation' applies to a foreign corporation engaged in trade or business within the Philippines.
>
> (I) The term 'nonresident foreign corporation' applies to a foreign corporation not engaged in trade or business within the Philippines.' (Emphasis in the original)

Consequently, 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.

There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. We ruled thus in Commissioner of Internal Revenue v. British Overseas Airways Corporation:

> 'x x x. There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, 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 for the purpose and object of the business organization. 'In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.'

A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer." (*Emphasis supplied*)

More so, the Supreme Court further ruled in the case of *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.,*[4] that the articles of association/certificates of incorporation stating that entities are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines, to wit:

> "In any case, after a judicious review of the records, the Court still do not find any reason to deviate from the court *a quo's* findings. To the Court's mind, the SEC Certifications of Non-Registration show that their affiliates are foreign corporations. On the other hand, the **articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines**.
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> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue*. In these cases, **the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.,* that the affiliate is foreign). The absence of any other competent evidence (*e.g.,* articles of association/ certificates of incorporation) proving the *second* component (*i.e.,* that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales.**" (*Emphasis supplied*)

Based on the foregoing, by presenting the SEC Certifications of Non-Registration, petitioner proved the *first component* that its clients are foreign corporation. However, as to the *second component*, petitioner failed to prove that the said clients are not doing business in the Philippines.

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[4] G.R. No. 234445, July 15, 2020.

As to petitioner's claim that it is already *fait accompli* and a matter of record that it is principally engaged in the business of providing freight forwarding services for the combined transportation by air, sea, or land; and as such its main source of income as freight forwarder is primarily generated from its sale of services to PEZA-registered entities, which is purportedly considered as zero-rated/effectively zero-rated sales.

Unfortunately, this Court does not agree.

Case law dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.[5] In fact, it was already explained in the case of *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*,[6] that the burden of a claimant who seeks refund of its excess or unutilized creditable input VAT pursuant to Section 112 of the NIRC is two-fold, *viz.*: (1) prove payment of input VAT to suppliers; and (2) prove zero-rated sales to purchasers, the Supreme Court held that:

> "As stated in our introduction, the burden of a claimant who seeks a refund of his excess or unutilized creditable input VAT pursuant to Section 112 of the NIRC is two-fold: (1) prove payment of input VAT to suppliers; and (2) prove zero-rated sales to purchasers. Additionally, the taxpayer- claimant has to show that the VAT payment made, called input VAT, is attributable to his zero-rated sales.
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> Be it noted that under the law on VAT, as contained in Title IV of the NIRC, there are three known taxable transactions, namely: (i) sale of goods or properties (Section 106); (ii) importation (Section 107); and (iii) sale of services and lease of properties (Section 108). Both sale transactions in Section 106 and 108 are qualified by the phrase 'in the course of trade or business,' whereas importation in Section 107 is not.
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> At this juncture, it is imperative to point out that the law had set apart the sale of goods or properties, as

[5] *J.R.A. Philippines Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013.
[6] G.R. No. 191495, July 23, 2018.

contained in Section 106, from the sale of services in Section 108.

In establishing the fact that taxable transactions like sale of goods or properties or sale of services were made, the law provided for invoicing and accounting requirements, to wit:

x x x

Irrefutably, **when a VAT-taxpayer claims to have zero-rated sales of services, it must substantiate the same through valid VAT official receipts, not any other document, not even a sales invoice which properly pertains to a sale of goods or properties**.

In this case, **the documentary proofs presented by Nippon Express to substantiate its zero-rated sales of services consisted of sales invoices and other secondary evidence like transfer slips, credit memos, cargo manifests, and credit notes. It is very clear that these are inadequate to support the petitioner's sales of services**. Consequently, the CTA, albeit without jurisdiction, correctly ruled that Nippon Express is not entitled to its claim." *(Emphasis supplied)*

Again, in the present case, petitioner presented the PEZA Certifications to prove that its clients are indeed duly registered with the PEZA. However, petitioner failed to present as evidence the VAT zero-rated official receipts to substantiate its alleged zero-rated sales to PEZA-registered entities. Thus, petitioner's sales of services to the said PEZA-registered entities, likewise, cannot be considered as subject to the zero percent (0%) VAT, pursuant to Section 108(B)(3) of the NIRC of 1997, as amended.

In view of the foregoing disquisitions, this Court finds no cogent reason to reverse or modify the Decision assailed by petitioner.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration (Re: Decision dated 27 July 2020) is **DENIED** for lack of merit.

SO ORDERED.

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

I Concur:

JEAN MARIE A. BACORRO-VILLENA
Associate Justice