REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

ASURION HONG KONG LIMITED - ROHQ,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9852

Members:

UY, *Chairperson*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
SEP 20 2022
11:08 a.m.

x- -x

RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is petitioner's **Motion for Reconsideration** filed on March 9, 2022, without respondent's comment as per Records Verification Report dated July 26, 2022.

On February 9, 2022, the Court promulgated a Decision denying petitioner's claim for refund of its unutilized input value-added tax ("VAT") attributable to its zero-rated sales of service covering the period January 1, 2016 to June 30, 2016 for failing to sufficiently prove that the said service were performed in the Philippines, the dispositive portion of which states:

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

In its Motion, petitioner primarily insists that it was able to satisfactorily establish that the subject services were performed within the Philippines. Petitioner posits that the Court failed to consider the nature of petitioner's

:00001003

business as a regional operating headquarters ("ROHQ") – that an ROHQ is allowed to derive income in the Philippines through the performance of services, which logically, is to be performed in the Philippines following the rules on situs of taxation. Petitioner also asserts that when it obtained its license as an ROHQ from the Securities and Exchange Commission ("SEC"), it was allowed to derive income within the Philippines by performing qualifying services in the Philippines to its affiliates, subsidiaries, or branches. It continues that since the income allowed to be derived by petitioner in the Philippines involves the performance of services, the services to be rendered therefore must necessarily be performed in the Philippines. Otherwise, if the same services were intended to be performed outside the Philippines, petitioner would not have applied for a license as an ROHQ in the Philippines.

Petitioner further argues that the testimony of its witness stating that petitioner's services were performed in the Philippines was unrebutted by respondent. As such, petitioner claims that such unrebutted testimony is sufficient evidence and that a disputable presumption exist in its favor which should stand when no contrary evidence is presented.

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

Verily, it must be noted that the issue as to whether or not petitioner performed services in the Philippines is a question of fact. Accordingly, it must be proven by specific evidence. Petitioner cannot merely rely on the provision that ROHQs are licensed to do business in the Philippines to prove a fact in issue. It is not enough to show that petitioner is a ROHQ, it is still necessary on its part to prove that its services were performed in the Philippines.

In the same vein, the testimony of petitioner's witness without corroboration with any specific evidence offered by petitioner, most notably, the Service Agreement between petitioner and Asurion Insurance Services, Inc. (AISI), fails to convincingly establish that the services rendered by petitioner were indeed performed in the Philippines. To reiterate, the Service Agreement does not categorically state that the contracted Services shall be performed in the Philippines, and taking everything into consideration, the bulk of petitioner's evidence lacks sufficient indication that the subject services were performed in the Philippines.

Again, 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 since actions for tax refund or credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[1] The pieces of evidence presented entitling a taxpayer to an exemption

[1] Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc., G.R. No. 127105, June 25, 1999.

are also *strictissimi* scrutinized and must be duly proven.[2] Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary requirements.[3]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by respondent in his Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on February 9, 2022.

WHEREFORE, in light of the foregoing considerations, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

We Concur:

ERLINDA P. UY
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

[2] Kepco Philippines Corporation v. Commissioner of Internal Revenue, G.R. No. 179961, January 31, 2011 *citing* Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, G.R. No. 159490, February 18, 2008.

[3] Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 183531, March 25, 2015 *citing* J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 171307, August 28, 2013.