REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

BSM CREW SERVICE CENTRE PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10135

Members:

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

Promulgated:

JUL 19 2023
1:02 p.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

Before this Court is petitioner's **Motion for Reconsideration (of the Decision dated March 29, 2023)** filed on May 11, 2023, with respondent's **Opposition (Re: Motion for Reconsideration of the Decision dated 29 March 2023)** filed on June 14, 2023.

On March 29, 2023, the Court promulgated a Decision denying petitioner's claim for refund of input value-added tax (VAT) attributable to its zero-rated sales of service in the total amount of ₱4,788,317.31 for failing to satisfactorily establish that the said sales of service were performed in the Philippines, the dispositive portion of which states as follows:

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

In its Motion, petitioner insists that its sales of service were zero-rated or effectively zero-rated. Petitioner claims that perusal of the record of the case would readily show that a Memorandum and Articles of Association of BERNHARD SCHULTE SHIPMGT HONGKONG LTD PTE, duly marked as Exhibits "ICPA-P3-35" to "ICPA-P3-60", were offered to and admitted as evidence by the Court. Likewise, the Securities and Exchange Commission (SEC) Certification of Non-Registration and Memorandum and Articles of Association of BERNHARD SCHULTE SHIPMGT CYPRUS LTD (HAMMONIA), marked as Exhibit "ICPA-P3-3" and Exhibits "ICPA-P3-13" to "ICPA-P3-24", respectively, were also offered and admitted as evidence in the course of the proceedings. Moreover, petitioner asserts that Annex H of the Independent Certified Public Accountant (ICPA) Report states that petitioner's clients are non-resident foreign corporations (NRFCs) for purpose of VAT zero-rating. Thus, petitioner posits that the above pieces of evidence indicate that petitioner's clients are NRFCs.

Petitioner also assails the Court's ruling that the Service Agreements between petitioner and its NRFC clients do not bear any indication that the subject services were to be performed in the Philippines, nor does it categorically state that the contracted services thereof shall be performed in the Philippines. Petitioner avers that the Court may have overlooked the report and annexes submitted and identified by the duly commissioned ICPA. Petitioner points out that Exhibits "ICPA-P8-2", "ICPA-P8-3", "ICPA-P8-17", "ICPA-P8-18", "ICPA-P8-21", "ICPA-P8-22", "ICPA-P8-40" and "ICPA-P8-41", enumerates the services that petitioner will implement as agent which specify that the said services will be performed in the Philippines. Petitioner stresses that Exhibit "ICPA-P8-12" clearly states that, as agent, it shall supply Philippine crewmembers through the National Seamen Board when requested by the principal; and that Exhibit "ICPA-P8-31" specifically indicates that the principal appoints its agent, petitioner, as the manning agency responsible for the deployment of Filipino seafarer(s) on board ocean-going liquefied petroleum gas (LPG) Tankers.

Lastly, petitioner maintains that its sales of services, the consideration of which were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas, are indeed subject to zero percent (0%) VAT as these were all duly supported by billing invoices, official receipts, bank credit memos, settlement advice and certificates or inward remittances.

On the other hand, in its Opposition, respondent disagrees with petitioner's contention that it has complied with the requisites for its sales to qualify for VAT zero-rating. Respondent asseverates that the claimant has the burden of proof to establish the factual basis of its claim for tax credit or refund. After all, tax refunds, like tax exemptions, are construed strictly against the taxpayer.

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

Petitioner reiterates that it offered as evidence a Memorandum and Articles of Association of BERNHARD SCHULTE SHIPMGT HONGKONG LTD PTE, marked as Exhibits "ICPA-P3-35" to "ICPA-P3-60", and the SEC Certification of Non-Registration and Memorandum and Articles of Association of BERNHARD SCHULTE SHIPMGT CYPRUS LTD (HAMMONIA), marked as Exhibit "ICPA-P3-3" and Exhibits "ICPA-P3-13" to "ICPA-P3-24", respectively. Petitioner assumes that the Court may have overlooked the report and annexes submitted and identified by the duly commissioned ICPA.

However, Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals provides:

> "SEC. 3. *Findings of independent CPA.* - **The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification** and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification**." *(Emphasis supplied)*

From the above provision, this Court is not bound by the findings of the ICPA. The report submitted by the ICPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. In addition, the Court is free to adapt or disregard, completely or partially, the findings of the ICPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[1]

Simply stated, the Court will still examine and verify the documents audited or examined by the ICPA – and the Court, in its sound discretion, may render judgment without considering the ICPA report.

Herein, the Court did not overlook the report and annexes submitted and identified by the duly commissioned ICPA. Unfortunately, Exhibits "ICPA-P3-35" to "ICPA-P3-60", cited by the ICPA as the Memorandum and Articles of Association of BERNHARD SCHULTE SHIPMGT HONGKONG **LTD PTE**, were not adopted by the Court since the said company name does not match with the company name indicated on the said exhibits, *i.e.*, "BERNHARD SCHULTE SHIPMANAGEMENT (HONGKONG) **LIMITED**

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[1] *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*, CTA EB Case No. 563, March 1, 2011.

PARTNERSHIP" (Exhibits "ICPA-P3-35") and "BERNHARD SCHULTE SHIPMANAGEMENT **(L) LIMITED**" (situated in the Federal Territory of Labuan Malaysia) [Exhibits "ICPA-P3-36" to "ICPA-P3-60"].

Furthermore, Exhibit "ICPA-P3-3" and Exhibits "ICPA-P3-13" to "ICPA-P3-24", cited by the ICPA as the SEC Certification of Non-Registration and Memorandum and Articles of Association of BERNHARD SCHULTE SHIPMGT CYPRUS LTD **(HAMMONIA)**, respectively, were likewise not adopted by the Court since the said company name does not match with the company name indicated on the said exhibits, *i.e.*, "Bernhard Schulte Shipmanagement (Cyprus) Limited" and "BERNHARD SCHULTE SHIPMANAGEMENTT (CYPRUS) LIMITED".

As to the provisions claimed by petitioner in the Service Agreements (Exhibits "ICPA-P8-2", "ICPA-P8-3", "ICPA-P8-17", "ICPA-P8-18", "ICPA-P8-21", "ICPA-P8-22", "ICPA-P8-40" and "ICPA-P8-41") that serves as proof that the services will be performed in the Philippines, the Court is still not convinced.

Verily, the above provisions declaring that the principals will be provided with the "POEA Standard Employment Contract"; that "the AGENT shall make, sign seal and execute employment contracts/documents in connection with the hiring of Filipino SEAFARER(s) supplied by the AGENTS"; that "the AGENT is to maintain constant liaison with the Philippine Government agencies and update the PRINICIPALS on government regulations pertaining to sea-based employment industry"; that "the AGENT shall supply Philippine crewmembers through the National Seamen Board"; and that "as the Manning Agency responsible for the deployment [of] Filipino SEAFARER(s) on board ocean-going LPG TANKERS", do not clearly state, or categorically resemble, that the services shall indeed be performed in the Philippines. Accordingly, the Court maintains its ruling in the assailed Decision that the Service Agreements[2] between petitioner and its NRFC clients do not bear any indication that the subject services were to be performed by petitioner in the Philippines.

Perforce, the one who alleges a fact has the burden of proving it and the proof should be clear, positive and convincing. Mere allegation is not evidence.[3] It is worthy to note that a judgment has to be based on facts. Conjectures and surmises cannot substitute for the facts. "A conjecture is always a conjecture; it can never be admitted as evidence."[4] In the present case, no evidence was offered by petitioner that would show that the subject services were performed in the Philippines.

[2] Exhibits "ICPA-P8-1" to "ICPA-P8-100".
[3] *Dionarto Q. Noblejas v. Italian Maritime Academy Phil., Inc., et al.*, G.R. No. 207888, June 9, 2014.
[4] *Spouses William Guidangen and Mary Guidangen v. Devota B. Wooden*, G.R. No. 174445, February 15, 2012.

To stress, the burden is on the taxpayer to show that it 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.[5] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[6] 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.[7]

In view of the foregoing disquisitions, there being no new matter or substantial issue raised by petitioner in its Motion for Reconsideration, the Court finds no compelling reason to reverse, amend, or modify the Decision promulgated on March 29, 2023.

WHEREFORE, in light of the foregoing considerations, petitioner's Motion for Reconsideration (of the Decision dated March 29, 2023) is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I Concur:

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[5] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.,* G.R. No. 127105, June 25, 1999.
[6] *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.
[7] *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.