REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

CITCO INTERNATIONAL SUPPORT SERVICES LIMITED – PHILIPPINE ROHQ,	CTA CASE NO. 9102
	Members:
Petitioner,	FABON-VICTORINO, *Acting Chairperson* and RINGPIS LIBAN, *JJ.*
-versus-	
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, Respondent.	FEB 04 2019 3:40 p.m.

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RESOLUTION

Fabon-Victorino, JJ:

This resolves the Motion for Reconsideration[1] filed by respondent Commissioner of Internal Revenue on July 20, 2018 through registered mail, with petitioner's Comment thereto filed on August 31, 2018.

Petitioner seeks reconsideration of the Court's Decision[2] promulgated on July 2, 2018, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent Commissioner of Internal Revenue is hereby **ORDERED** to refund in favor of petitioner Citco International Support Services Limited – Philippine ROHQ the amount of **Five**

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[1] Vol. 2 Docket, pp. 959-962.
[2] Vol. 2 Docket, pp. 940-958.

> **Million Eight Hundred Fifty-Seven Thousand One Hundred Ninety-Three Pesos and 91/100 (Php5,857,193.91)** representing the latter's unutilized input value-added tax arising from its zero-rated sales for calendar year 2013.
>
> **SO ORDERED.**

In challenging the Court's Decision, respondent argues that petitioner's sale of services does not qualify for zero-rating. Specifically, respondent insists that the Court should take a second look at petitioner's compliance with the second requisite provided under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, *i.e.*, the recipient of services is doing business outside the Philippines. According to respondent, petitioner only presented the following: Certification of Authentication (Certificate of Registered Office), Articles of Incorporation of Foreign Affiliates, Securities and Exchange Commission (SEC) Certificate of Non-Registration of Company and Master Service Agreement, to prove that the recipients of services are doing business outside the Philippines. However, these documents, says respondent, merely proved that petitioner's clients were foreign entities but failed to demonstrate they were doing business outside the Philippines.

In rejecting respondent's bid for reconsideration, petitioner counters that respondent's motion failed to raise any new, cogent or substantial ground(s) to warrant a reconsideration of the assailed Decision. Further, petitioner asserts that a Certificate of Non-Registration of a company issued by the SEC and the Articles of Foreign Incorporation are sufficient to prove that a company is a non-resident foreign corporation doing business outside the Philippines.

THE RULING OF THE COURT

The Motion for Reconsideration is without merit.

A review of the record shows that petitioner submitted sufficient evidence as to justify a partial grant of its claim for VAT refund/tax credit.

Nevertheless, let it be emphasized that as provided by Section 108(B)(2) of the NIRC of 1997, as amended, in order for a sale of service transaction to be subject to zero percent VAT rate, it is required, among others, that the services were "rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed". Further, the Supreme Court, in the case of *Accenture, Inc. v. Commissioner of Internal Revenue*[3], ruled that in order to come within the purview of Section 108(B)(2) of the NIRC of 1997, as amended, it is not enough that the recipient of the service be established to be a foreign corporation; rather, it must be specifically proved to be a nonresident foreign corporation. Moreover, there must be no indication that the recipient of the services is doing business in the Philippines.

Likewise, in the case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue*[4], the Court *En Banc* ruled:

> To be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **both** a certificate of non-registration of corporation / partnership issued by the SEC and certificate / articles of foreign incorporation / association.
>
> These two (2) documents are necessary. The SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines (*i.e.*, not engaged in trade or business within the Philippines). On the other hand, the certificate / articles of incorporation / association prove two things: (1) that the recipient of the service is indeed foreign, and (2) it is engaged in business in the country of incorporation/association (*i.e.*, a showing of a continuity of commercial dealings and intention to establish a continuous business).

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[3] G.R. No. 190102, July 11, 2012.
[4] CTA EB Nos. 1508 and 1509 (CTA Case No. 8621), March 21, 2018.

Plain from the foregoing that 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 both the SEC Certificate of Non-Registration of Corporation/Partnership **and** the Certificate/Articles of Foreign Incorporation/Association/Registration, and that there is no other indication that the recipient of the services is doing business in the Philippines.

In this case, a review of the record reveals that petitioner was able to present both Articles of Incorporation of Foreign Affiliates and SEC Certificate of Non-Registration of Company to prove that its clients are non-resident foreign corporations doing business outside the Philippines. Thus, petitioner complied with the second requisite provided under Section 108(B)(2) of the NIRC of 1997, as amended, among others.

WHEREFORE, there being no new matters and issues advanced that will merit reconsideration, let alone modification of the assailed Decision of July 2, 2018, respondent's **Motion for Reconsideration** posted on July 20, 2018, is **DENIED,** for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice