CTA Form No. 8 (For DCC)

18-000325-0083

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 9884

MSCI HONGKONG LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. PHILIP A. MAYO
ATTY. CARL FITRI A. HUSSIN
ATTY. DYRENE MARA S. ROSARIO
Bureau of Internal Revenue - Revenue Region No. 8A
36th Floor, Legal Division, Export Bank Plaza Bldg.
313 Sen. Gil Puyat Ave. corner Chino Roces Avenue, Makati City

SALVADOR LLANILLO & BERNARDO
Units 815-816, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **May 28, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **May 29, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

MSCI HONG KONG LIMITED,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9884

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

MAY 2 8 2024 2:30PM

x - x

RESOLUTION

MANAHAN, *J.*:

This resolves respondent's **Motion for Reconsideration (Re: Decision dated 15 January 2024)**[1] filed through licensed courier on February 5, 2024 and received by this Court on February 6, 2024, seeking the reconsideration and setting aside of the Court's *Decision* dated January 15, 2024 (Assailed Decision), and the denial instead of petitioner's judicial claim for refund.

Respondent argues that petitioner failed to sufficiently prove that it is engaged in zero-rated sales or effectively zero-rated sales of services under Section 108(b)(2) of the 1997 National Internal Revenue Code (NIRC), as amended.

Respondent insists that petitioner failed to comply with the invoicing requirements under the same law.

On the other hand, petitioner in its **Comment (Re: Motion for Reconsideration dated February 5, 2024)**[2] filed on February 26, 2024, contends that it has sufficiently proven that

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[1] Docket, Vol. III, pp. 1312-1324.
[2] Docket, Vol. III, pp. 1328-1335.

it is engaged in zero-rated sales or effectively zero-rated sales of service under Section 108(b)(2) of the 1997 NIRC, as amended.

Petitioner also insists that it had complied with the invoicing requirements under the 1997 NIRC, as amended, and Bureau of Internal Revenue Rules and Regulations.

We resolve.

On the timeliness of the filing of the motion at hand, respondent avers that it received the Assailed Decision on January 19, 2024, thus, it had fifteen (15) days from receipt of notice on January 19, 2024 or until February 5, 2024[3] within which to file its motion for reconsideration in accordance with Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals.[4] Respondent's *Motion for Reconsideration* on February 5, 2024 was timely filed.

Going now to the substance of the motion, we deny it for lack of merit.

Respondent argues that there was no evidence that the recipient of petitioner's services, such as MSCI Inc. and Investment Property Databank (IPD) Limited, are its affiliates, subsidiary or branch office. Hence, petitioner failed to prove that it is engaged in zero-rated sales or effectively zero-rated sales of services under Section 108(b)(2) of the 1997 NIRC, as amended.

However, petitioner counter-argues that, as shown in pages 7 to 10 of Exhibit "P-1", petitioner and IPD Limited are ultimately subsidiaries of MSCI, Inc.

A closer look at Exhibit "P-1", or the attached Application of Multinational Company for Registration and License to Establish a Regional Operating Headquarters in the Philippines,[5] shows that indeed MSCI, Inc. and IPD Limited were declared as either an affiliate, subsidiary or branch office

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[3] February 3, 2024 fell on Saturday, hence, the next working day was February 5, 2024.

[4] "SECTION 1. *Who may and when to file motion.*- **Any aggrieved party may seek a reconsideration** or new trial **of any decision**, resolution, or order **of the Court**. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question." (*Emphasis supplied*)

[5] Docket, CTA Case No. 9884, Vol. III, Exhibit "P-1", pp. 982-988.

by petitioner. Thus, petitioner was able to prove that petitioner is affiliated with MSCI, Inc. and IPD Limited.

Respondent also argues that it cannot be determined with certainty that the payment as shown in the invoices or official receipts (ORs) was for a sale of service qualified as zero-rated transactions under Section 108(b)(2) of the 1997 NIRC, as amended.

However, such argument is contrary to the factual findings of this Court, to wit:

> "Based on the foregoing provision, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%) under Section 108(B)(2) of the 1997 NIRC, as amended, to wit:
>
> 1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;
>
> 2. The services fall under any of the categories under Section 108(B)(2), or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;
>
> 3. The services must be performed in the Philippines by a VAT-registered person; and
>
> 4. The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.
>
> Relative to the *first* essential element, to prove that its clients are NRFC for purposes of VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, petitioner must prove that: (1) the client was established under the laws of a foreign country; and, (2) it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these requirements to establish that the clients are foreign corporations and are not doing business in the Philippines.
>
> Thus, petitioner must submit for its NRFC clients, at the very least, **both**: (1) the SEC Certificate of Non-Registration of Corporation/Partnership; **and** (2) Proof of Certificate/Articles of Foreign Incorporation/Association showing the state/province/country where the entity was organized.

The SEC Certificate of Non-Registration shows that the foreign client is not engaged in trade or business in the Philippines. On the other hand, the Certificate/Articles of Foreign Incorporation/Association proves that the client was established under the laws of a foreign country. Together, these two (2) documents prove the two (2) requisites necessary to establish the NRFC status of a client.

In this case, the following table shows whether petitioner complied with the *first* essential element as it presented evidence of the said SEC Certificate of Non-Registration and Certificates of Registration/Foreign Incorporation/Association for each of the recipients of the services rendered by petitioner, *viz.*:

xxx xxx xxx

Taken together, said documents duly established that MSCI Inc. and Investment Property Databank Limited are NRFC not engaged in business in the Philippines.

As regards the *second* essential element, petitioner presented its Services Agreement with MSCI Inc., whereby petitioner provides administration, sales support and marketing, analytics, management and index research and production services to MSCI Inc. Petitioner likewise presented its Services Agreement with Investment Property Databank Limited, wherein petitioner was appointed to provide sales and marketing support activities to the former. These services clearly fall within the scope of *"services other than processing, manufacturing or repacking of goods"* contemplated by the afore-mentioned provision, hence, petitioner satisfactorily complied with the *second* essential element.

Relative to the *third* essential element, petitioner was able to establish its compliance therewith. Its Services Agreement with MSCI Inc. categorically states that the aforementioned services shall be performed in the Philippines, while its Services Agreement with Investment Property Databank Limited states that the said services will be rendered in Manila. Thus, in the present case, the *third* essential element is shown.

As to the *fourth* essential element and in relation to the *fifth* requisite for the granting of the input VAT refund, petitioner presented the *Certificate of Inward Remittance* and bank credit memos from the Bank of America Merrill Lynch purportedly showing the remittances of its non-resident foreign clients for the CY 2016. It is noteworthy that the certification of inward remittances attests to the fact of payment *"in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP"*.

Also, respondent failed to present any evidence in the instant motion to corroborate such allegation.

Lastly, respondent argues that the term "zero-rated sale" was not written or printed prominently on the official receipts (ORs) presented by petitioner. On the other hand, petitioner counter argues that the court-appointed Independent Certified Public Accountant (ICPA), after performing extensive verification, confirmed that its zero-rated sales/receipts for the four quarters of taxable year 2016 were properly supported.

Section 113(B) of the 1997 NIRC, as amended, provides:

> "SEC. 113. *Invoicing and Accounting Requirements for VAT-registered Persons.* —
>
> (A) xxx xxx xxx
>
> (B) *Information Contained in the VAT Invoice or VAT Official Receipt.* — The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his Taxpayer's Identification Number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax: *Provided*, That:
>
> (a) The amount of the tax shall be shown as a separate item in the invoice or receipt;
>
> (b) If the sale is exempt from value-added tax, the term **'VAT-exempt sale'** shall be written or printed prominently on the invoice or receipt;
>
> (c) If the sale is subject to zero percent (0%) value-added tax, the term **'zero-rated sale'** shall be written or printed prominently on the invoice or receipt;
>
> d) If the sale involves goods, properties or services some of which are subject to and some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the break-down of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt: *Provided*, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale...."

Similarly, Q14 and A14 of Revenue Memorandum Circular (RMC) No. 62-05 dated October 18, 2005 allows single OR for those VAT and non-VAT transactions, to wit: *cm*

"Q14 May a VAT registered person issue a single invoice/receipt involving VAT and Non-VAT transactions?

A14 Yes. He may issue a single invoice/receipt involving VAT and non-VAT transactions provided the invoice or receipt shall clearly indicate the breakdown of the sales price between its taxable, exempt and zero-rated components and the calculation of the Value Added Tax on each portion of the sale shall be shown on the invoice or receipt."

A closer look at the ORs issued by petitioner reveals that petitioner's VAT and non-VAT transactions are all included therein, to wit:

In settlement of the following:	
Invoice No.	Amount
Total Sales (VAT Inclusive)	
Less: VAT	
Total Due	
Less: Withholding Tax	
Amount Due	
VATable Sales	
VAT-Exempt Sales	
Zero Rated Sales	$ 484,485 79
VAT Amount	
Total Sales	
Form of Payment: Cash ☐ Check ☐	
Bank ____ Check# ____	

5 Bklts (50x3) 0001-0250 BIR Authority to Print No. 9AU0000723984
Date Issued 09-03-2014; Valid until 09-02-2019
MASTERCRAFT Copying and Printing, Inc.
LG 10 Cityland 10 Tower 1, H.V. Dela Costa St.,
Salcedo Village, Makati City
VAT REG. TIN: 006-721-490-000
Printer's Accreditation No. 050MP2013000000003
Date Issued 12-December-2013

MSCI HONG KONG LIMITED
29/Flr. Zuellig Building Makati Avenue Cor.
P. De Roxas Makati City
VAT REG. TIN: 008-724-942-000

OFFICIAL RECEIPT

DATE January 20, 2016

RECEIVED from MSCI Inc.
with TIN ____ and Address at 7 World Trade Center, 250 Greenwich Street, 47th Floor, New York, NY 10007, USA
engaged in the business style of ____, the sum of USD four hundred eighty four thousand four hundred eighty five and 79/100 US dollars ~~pesos~~
(484,485.79) In partial/full payment for December 2015 transfer pricing.

By: ____
Cashier / Authorized Representative

№ 0032

THIS OFFICIAL RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF ATP

In settlement of the following:	
Invoice No.	Amount
Total Sales (VAT Inclusive)	
Less: VAT	
Total Due	
Less: Withholding Tax	
Amount Due	
VATable Sales	
VAT-Exempt Sales	
Zero Rated Sales	$ 2,315 36
VAT Amount	
Total Sales	
Form of Payment: Cash ☐ Check ☐	
Bank ____ Check# ____	

5 Bklts (50x3) 0001-0250 BIR Authority to Print No. 9AU0000723984
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MASTERCRAFT Copying and Printing, Inc.
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Printer's Accreditation No. 050MP2013000000003
Date Issued 12-December-2013

MSCI HONG KONG LIMITED
29/Flr. Zuellig Building Makati Avenue Cor.
P. De Roxas Makati City
VAT REG. TIN: 008-724-942-000

OFFICIAL RECEIPT

DATE January 25, 2016

RECEIVED from Investment Property Databank Ltd.
with TIN ____ and Address at Ninth Floor, Ten Bishops Square, London E1, 6EG, United Kingdom
engaged in the business style of ____, the sum of USD two thousand three hundred fifteen and 36/100 US dollars ~~pesos~~
(2,315.36) In partial/full payment for December 2015 transfer pricing.

By: ____
Cashier / Authorized Representative

№ 0033

THIS OFFICIAL RECEIPT SHALL BE VALID FOR FIVE (5) YEARS FROM THE DATE OF ATP

Thus, said ORs have substantially complied with the essential requisites of Section 113(B) of the 1997 NIRC, as amended, and RMC No. 62-05.

There being no new and substantial arguments propounded by petitioner in its Motion, the Court finds no compelling reason to reverse the Assailed Decision.

WHEREFORE, respondent's *Motion for Reconsideration (Re: Decision dated 15 January 2024)* is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(*I reiterate my Dissenting Opinion*)
ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice