REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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AMADEUS MARKETING PHILIPPINES, INC., Petitioner,	CTA EB No. 1838 (CTA Case No. 8869)
	Present:
-versus-	DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 26 2019 4:06 p.m.

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DECISION

Fabon-Victorino, J.:

This petition for review dated May 4, 2018[1] filed by Amadeus Marketing Philippines, Inc. seeks to overturn the Decision dated November 27, 2017[2] and the Resolution dated April 3, 2018,[3] both rendered by the Court in Division in CTA Case No. 8869, denying its claim for refund of alleged excess and unutilized input taxes imputable to zero-rated sales in the amount of ₱31,881,111.78 covering the first to the fourth quarters of calendar year 2012.

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1 *Rollo,* pp. 7-31.
2 Ibid. at pp. 46-62.
3 Id. at pp. 36-44.

The established facts are as follows.

Petitioner Amadeus Marketing Philippines, Inc. is a value-added tax (VAT)[4] and Securities and Exchange Commission (SEC)[5] - registered corporation, organized under the laws of the Philippines, with office address at 36th Floor, LKG Tower, 6801 Ayala Avenue, Makati City. Its primary purpose is to market an automated computerized reservations system, known as "Amadeus Global Travel Distribution" which includes a software package performing various functions, such as real line airline seat reservations, schedules bookings for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing and fare pricing displays in the Philippines.

Respondent Commissioner of Internal Revenue on the other hand, is authorized to perform the duties of his office, including, among others, the duty to act on and approve claims for refund as provided by law. He holds office at the BIR National Office Building, Diliman, Quezon City.

On March 28, 2014, petitioner filed with the BIR Revenue District Office No. 50, an administrative claim for refund of unutilized input VAT for the first to the fourth quarters of 2012 in the aggregate amount of ₱31,881,111.78.

On August 14, 2014, petitioner filed a Petition for Review with the Court in Division, claiming inaction on its administrative claim for refund on the part of respondent.

On November 27, 2017, the Court in Division rendered the impugned Decision, disposing the case in the following fashion:

> **WHEREFORE**, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

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4 BIR Certificate of Registration No. OCN 9RC000133815 dated January 1, 1998.

5 Securities and Exchange Commission under Company Registration No. A1997-11194.

SO ORDERED.

The Court in Division explained that since the recipient of petitioner's services, namely, Amadeus IT Group S.A. (AGSA), is a foreign entity actively doing business in the Philippines, as revealed in the ACO (Amadeus Commercial Organization) Agreement[6] by and between petitioner and AGSA, it failed to satisfy one of the three (3) requisites in order for a sale of services to be VAT-zero rated under Section 108(B)(2) of the NIRC, as amended, to wit: that the recipient of the services is doing business outside the Philippines. Without zero-rated sales to which input taxes may be attributed, its claim for input taxes refund for the period covering first to the fourth quarters of calendar year 2012 should be entirely disallowed.

On December 13, 2017, petitioner filed a Motion for Reconsideration[7] of the impugned Decision of November 27, 2017, but the same was denied by the Court in Division in the equally impugned Resolution of April 3, 2018. Hence, the present recourse.

Petitioner claims that the Court in Division erred in ruling that it is not entitled to refund of the amount of ₱31,881,111.78, representing its unutilized input VAT attributable to its zero-rated sales for the four (4) quarters of CY 2012. It reasons that under Section 108(B)(2) of the NIRC, as amended, it is sufficient for petitioner to establish that the recipient of the services it rendered be a person engaged in business outside the Philippines; or that it is a non-resident person not engaged in business who is outside the Philippines when the services are performed. To require the services it rendered to be connected with AGSA's business outside the Philippines is to impose an additional condition not found in the Tax Code.

Petitioner opines that with its presentation of the pertinent Certification of Non-Registration/Partnership issued by the Securities and Exchange Commission (SEC), along with the Certificate/Articles of Foreign Incorporation of its client AGSA, it has adequately satisfied the benchmark

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6 Exhibit P-4.
7 Docket (CTA Case No. 8869), pp. 1583-1598.

spelled out in the number of cases decided by the Court. In other words, it was able to prove that AGSA is a foreign entity not engaged in business in the Philippines, for which reason its services rendered to it were zero-rated pursuant to Section 108(B)(2) of the NIRC, as amended.

Petitioner further states that contrary to the finding of the Court in Division, it is acting independently of its client AGSA in marketing and distributing Amadeus products in the Philippines with its subscribers as shown in the numerous business acts, particularly: a) its installation of product at its own cost; b) delivery of products and its maintenance; c) provide telephone, active on-site, support and remote assistance; and d) set price to be charged on such product.

Even assuming that petitioner acted on behalf of AGSA in distributing Amadeus products in the Philippines, such alleged contract of agency does not render AGSA as doing business in, or created a permanent establishment in the Philippines, relying on the RP-Spain Tax Treaty, side by side with BIR-International Tax Affairs Division (ITAD) Rulings as authorities.

Instead of a Memorandum, respondent filed a Manifestation and Motion,[8] adopting the factual and legal findings of the Court in Division in the assailed Decision and Resolution that petitioner is not entitled to zero-rated sales of services under Section 108(B)(2) of the NIRC, as amended, since its client AGSA is a foreign entity actively pursuing business in the Philippines.

THE RULING OF THE COURT

The petition is devoid of merit.

Central to the resolution of this petition is Section 108(B)(2) of the NIRC, as amended, which reads:

> **SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –**

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8 Respondent's *Manifestation and Motion* dated October 12, 2018, *rollo,* pp. 113- 119.

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> **(B) Transactions Subject to Zero Percent (0%) Rate** - The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate.
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> (2) Services other than those mentioned in the preceding paragraph,[9] 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, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

In *Accenture, Inc. vs. Commissioner of Internal Revenue,*[10] the Supreme Court ruled that to come within the coverage of Section 108(B)(2) of the NIRC, as amended, the taxpayer must show that the entity to whom it rendered services is a foreign corporation not engaged in business in the Philippines, thus:

> 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 x x x x x x
> >
> > (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*)
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> Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service

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9 These services are processing, manufacturing, packing of goods. See Section 108(B)(1), NIRC, as amended.

10 G.R. No. 190102, July 11, 2012.

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> be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.

For zero-rating of services under Section 108(B)(2) of the NIRC, as amended to apply, the following preconditions must concur: *first,* the services rendered must be other than processing, manufacturing, or repacking of goods; *second,* the recipient of such services must be a foreign corporation doing business outside the Philippines; and *third,* the consideration for such services is paid in foreign currency and duly accounted for pursuant to existing BSP rules and regulations.[11] Under the obtaining circumstances, petitioner failed to satisfy the *second* requisite, justifying the denial of its claim for refund.

Petitioner argues that Section 108(B)(2) of the NIRC, as amended does not require that the services it rendered to AGSA be in connection with the latter's business abroad for VAT zero-rating to apply.

In relation to petitioner's argument, let us consider [o]ne of the basic rules in statutory interpretation xxx that all parts of a statute are to be harmonized and reconciled so that effect may be given to each and every part thereof, and that conflicting intentions in the same statute are never to be supposed or so regarded.[12] The law must not be read in truncated parts, its provisions must be read in relation to the whole law. The particular words, clauses and phrases should not be studied as detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.[13]

Indeed, it is not expressly provided in Section 108(B)(2) of the NIRC, as amended, that services rendered by a VAT-registered taxpayer be in consideration of its client's commercial undertaking *outside* the Philippines for the same to be afforded 0% VAT. However, such provision

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11 See *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor of Mindanao, Inc.,* G.R. No. 153205, January 22, 2007.

12 *Spouses Villaluz vs. Land Bank of the Philippines,* G.R. No. 192602, January 18, 2017.

13 *PILMICO- Mauri Foods Corp. vs. Commissioner of Internal Revenue,* G.R. No. 175651, September 14, 2016, citing *Commissioner of Internal Revenue vs. Puregold Duty Free, Inc.,* G.R. No. 202789, June 22, 2015.

must be read in conjunction with Section 105 in relation to Section 108(A) of the same Code, which subjects to VAT at 12% services performed in, *and* in favor of client's business *within* the Philippine territory. To accurately determine whether the services is subject to VAT zero-rating or a regular rate of 12%, petitioner must establish that the services it rendered to AGSA necessarily pertain to the latter's business *outside* the Philippines.

Petitioner believes that by presenting in evidence AGSA's Foreign Articles/ Certificate of Association, along with the SEC Certificate of Non-Registration, it had already demonstrated that AGSA is a foreign entity doing business outside the Philippines.

The contention is more apparent, than real.

Consistently ruled in a litany of cases[14] is that presentation of *both* Foreign Articles/Certificate of Incorporation *and* SEC Certificate of Non-Registration will ordinarily prove that an entity is foreign corporation not doing business in the Philippines. However, what sets this case apart from the rest are the covenants set forth in the ACO Agreement[15] executed by petitioner and AGSA, leading the Court to rule otherwise.

Section 3(d), of Republic Act No. 7042,[16] enumerates the act or acts embraced by the term "doing business in the Philippines" in the following fashion:

> d) The phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the

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14 *Nokia (Philippines), Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 1313, September 22, 2016; *Deutsche Knowledge Service Pte. Ltd. vs. Commissioner of Internal Revenue,* CTA EB No. 1290, August 16, 2016; and *Chevron Holdings, Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 940, October 28, 2014.

15 Exhibit P-4.

16 Foreign Investments Act of 1991.

> Philippines; and <u>any other act or acts that imply a continuity of commercial dealings or arrangements, and contemplate 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 of the purpose and object of the business organization</u>: Provided, however, That the phrase "doing business: shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account; (underscoring supplied)

Thus, to determine if a foreign entity is doing business the following issue must be resolved, *viz.*: *whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized* or whether it has substantially retired from it and turned it over to another,[17] which in turn must be based on the facts of each case.[18]

Under the ACO Agreement,[19] AGSA's principal objective is the widespread availability of computerized information, products and services stored in the Amadeus Global Core through marketing and commercial activities.[20] To attain such purpose, AGSA and petitioner agreed that the latter would market, promote, offer, and distribute the Amadeus System in the Philippines on a commission basis.[21] Clearly, AGSA engaged petitioner as a means or a vehicle to further advance its primordial purpose of continually promoting, marketing, and distributing Amadeus products in the Philippines.

Concomitantly, numerous indicators convey AGSA's active participation in multiple aspects of marketing and distribution process of Amadeus products in the Philippines.

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17 See *MR Holdings Ltd. vs. Bajar,* G.R. No. 138104, April 11, 2002. (emphasis supplied)

18 *Cargill, Inc. vs. Intra Strata Assurance Corporation,* G.R. No. 168266, March 15, 2010.

19 Exhibit P-4.

20 2nd Paragraph, Recitals, ibid.

21 4th Paragraph, Recitals, ibid.

In particular, AGSA is permitted to directly contract multinational subscribers having headquarters or branches in the Philippines.[22] AGSA is also allowed to contract subscribers within the Philippines pertaining to CRS services through Amadeus online and corporate products.[23] The contracts entered into by AGSA with third-party licensor/s relative to marketing, offering, promoting Amadeus products must be honored by petitioner.[24] In addition, AGSA may halt and/or axe license agreement of any Philippine subscriber in the event of misuse or abuse of the Amadeus System.[25] Moreover, AGSA provides basic training program and materials to petitioner to effectively market, offer, and introduce use of the Amadeus system in Philippine setting.[26]

In fine, AGSA's propagation of Amadeus products in the Philippines through the services of petitioner, along with its active participation on several phases of the distribution process yields to a single conclusion - AGSA is a foreign entity actively engaged in business in the Philippines. For this reason, petitioner is not entitled to VAT zero-rating on the sale of services it rendered to AGSA pursuant to Section 108(B)(2) of the NIRC, as amended.

Petitioner contends that since it solely distributes Amadeus products under its own name and for its own account by virtue of the Distribution Agreement with AGSA, such pact negates any impression that the latter is doing business in the Philippines.

This should be corrected.

In *Commissioner of Internal Revenue vs. British Overseas Airways Corporation,*[27] the High Court ruled that establishment by a foreign corporation of a local agent in the Philippines is an act constitutive of doing business in the Philippines, to wit:

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[22] Paragraph 9.4, id.
[23] Id.
[24] Paragraph 5, id.
[25] Paragraph 9.3, id.
[26] Paragraph 11.1, id.
[27] G.R. Nos. L-65773-74, April 30, 1987. This principle was subsequently elucidated in *South African Airways vs. Commissioner of Internal Revenue,* G.R. No. 180356, February 16, 2010.

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> xxx. 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. (italics supplied)

Article 1868 of the Civil Code defines agency as a contract whereby a person binds himself to render some service or to do something in representation or on behalf of another.[28] The underlying principle of the contract of agency is to accomplish results by using the services of others – to do a great variety of things like selling, buying, manufacturing, and transporting. Its purpose is to extend the personality of the principal or the party for whom another acts and from whom he or she derives the authority to act. It is said that the basis of agency is representation, that is, the agent acts for and on behalf of the principal on matters within the scope of his authority and said acts have the same legal effect as if they were personally executed by the principal.[29]

The essential elements of agency are: (1) there is consent, express or implied of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agent acts as a representative and not for himself, and (4) the agent acts within the scope of his authority.[30] All of these elements exist in this case.

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[28] **Article 1868.** By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

[29] See *Eurotech Industrial Technologies, Inc. vs. Cuizon,* G.R. No. 167552, April 23, 2007.

[30] *Spouses Viloria vs. Continental Airlines, Inc.,* G.R. No. 188288, January 16, 2012.

Anent the *first* requisite, under the Distribution Agreement,[31] both AGSA and petitioner agreed that the latter would be the sole distributor[32] of Amadeus products owned[33] by AGSA, in consideration of a distribution fee dictated by the latter.[34] This evinces AGSA's intention to constitute petitioner as its authorized representative to market and purvey Amadeus products in the Philippines.

For the *second* requisite, the same Distribution Agreement provides that petitioner is specifically required to market,[35] and consequently grant license/s to *use* Amadeus products in favor of Philippine subscribers or clients.[36] Irrefutably, AGSA utilized petitioner's services to extend its personality in dealing with Philippine subscribers or clients relative to Amadeus products.

As to the *third* requisite, the Distribution Agreement unilaterally endows AGSA the authority to obligate petitioner to rescind license agreements entered into by the latter with Philippine subscribers in the event of breach of standards prescribed by AGSA.[37] In other words, AGSA has the final say on whether such agreements contracted by petitioner with Philippine subscribers should be allowed or rejected through the parameters set by it. This fact heavily militates against petitioner's claim that it is acting independently of AGSA in distributing Amadeus products in the Philippine territory.

The *fourth* requisite is likewise attendant since petitioner's competence is confined only to the distribution and marketing of Amadeus products, as well as the necessary incidents accompanying such distribution, i.e., installation, delivery, maintenance, telephone, active on-site, support and remote assistance, and determination of price of the product.

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31 Exhibit P-11.
32 Paragraph 2.1, ibid.
33 Paragraph 12.1, id.
34 Paragraph 11.1, id.
35 Paragraph 2.2, id.
36 Paragraph 3.1, id.
37 Paragraph 14.1., id.

Given that AGSA established petitioner as its local agent, the commercial services rendered by the latter in the Philippines, is by legal fiction, deemed as performed by the former. As such, AGSA is without doubt doing business in the Philippines. *Qui facit per alium facit se.* "He who acts through another acts himself."[38]

Moreover, petitioner's invocation of the RP-Spain Tax Treaty, various BIR-ITAD Rulings and the principle of *pacta sunt servanda* is utterly misplaced. The reason is evident – these are simply authorities that may support the taxpayer in obtaining relief from taxes under a Tax Treaty and have no bearing with respect to petitioner's claim of input VAT refund imputable to zero-rated sales anchored on Section 108(B)(2) of the NIRC, as amended.

On a final note, a claim for unutilized input value-added tax is in the nature of a tax exemption. Thus, strict adherence to the conditions prescribed by the law is required of the taxpayer.[39] And petitioner utterly failed in this regard.

WHEREFORE, the Petition for Review dated May 4, 2018 filed by Amadeus Marketing Philippines, Inc. is **DENIED**. The Decision dated November 27, 2017 and the Resolution dated April 3, 2018, both rendered by the Court in Division are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[38] *Rallos vs. Felix Go Chan & Sons Realty Corporation,* G.R. No. L-24332, January 31, 1978.

[39] See *STEAG State Power, Inc. (formerly State Power Development Corporation) vs. Commissioner of Internal Revenue,* G.R. No. 205282, January 14, 2019 (Resolution on Motion for Reconsideration).

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I reiterate my November 27, 2017 Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice