REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MAXIMA MACHINERIES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2282
(CTA Case No. 9598)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:

MAR 18 2022 1:25 pm

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RESOLUTION

For resolution is petitioner's **Motion for Reconsideration (Decision dated June 29, 2021)**, filed through registered mail on July 21, 2021 and received by this Court on October 4, 2021, with respondent's **Opposition (Re: Motion for Reconsideration of the Decision dated 29 June 2021)** filed on November 2, 2021.

Petitioner seeks reconsideration of the Decision dated June 29, 2021[1] (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the present Petition for Review is **DENIED** for lack of merit. Accordingly, the Court in Division's Decision dated January 22, 2020 and Resolution dated June 2, 2020 are **AFFIRMED**.
>
> **SO ORDERED.**"

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[1] CTA EB Docket, pp. 325-336.

Petitioner, in its Motion for Reconsideration, argues that:

(1) Marubeni Corporation – Japan should be considered a non-resident foreign corporation (NRFC) doing business outside of the Philippines;

(2) Through the uncontroverted testimony of its witness, Mr. Yusuke Yamada, petitioner was able to prove that the sales of services to Marubeni Corporation – Japan and Bomag Fayat Group are other than "processing, manufacturing or repacking of goods";

(3) The Input Tax on Importations under Exhibits "P-156", "P-158", "P-160", and "P-162" which were duly supported by the Bureau of Customs (BOC) E2M schedule should be considered; and,

(4) The Decision failed to discuss the validity of the amount of carry-over of excess input Value-Added Tax (VAT) from previous period.

A careful perusal of petitioner's Motion for Reconsideration, reveals that the arguments interposed by petitioner are mere rehash of the arguments raised in its Petition for Review filed on July 7, 2020 which have been duly considered and passed upon by the Court *En Banc* in the assailed Decision.

Nonetheless, the Court *En Banc* shall address anew petitioner's arguments in its Motion for Reconsideration in *seriatim* to put to rest the issues raised by petitioner.

Petitioner failed to prove that Marubeni Corporation – Japan is an NRFC

Petitioner insists that Marubeni Corporation – Japan should be considered as an NRFC doing business outside of the Philippines and consequently, its sales to said corporation should be considered as VAT zero-rated sales.

The Court *En Banc* is not convinced.

As provided for by law, the following 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 National Internal Revenue Code (NIRC) of 1997, 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]

2. The payment for such services were made in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules;[3]

3. The services rendered should be other than "processing, manufacturing or repacking goods";[4] and,

4. The services must be performed in the Philippines by a VAT-registered person.[5]

To be considered as an NRFC doing business outside the Philippines, each entity must be supported at the very least by both: (1) SEC Certification of Non-Registration of Corporation/Partnership; **AND** (2) Proof of Certificate/Articles of Foreign Incorporation/Association or printed screenshots of the US Securities and Exchange Commission (SEC) Website showing the state/province/country where the entity was organized.[6]

To prove that its sale of services to **Marubeni Corporation – Japan** qualifies for VAT zero-rating, petitioner submitted a Securities and Exchange Commission (SEC) Certification of Non-Registration of Company attesting that Marubeni Corporation – Japan is not registered as a corporation or partnership in the records of the SEC, and the duly-authenticated Articles of Incorporation of **Marubeni Corporation.** Interestingly, the supporting documents such as official receipts, bank certificates of inward remittance, and the duly-authenticated Articles of Incorporation, reveal that petitioner had actually transacted with "Marubeni Corporation" and not "Marubeni Corporation – Japan". Thus, the Court in Division found that petitioner failed to prove that it rendered services to Marubeni Corporation – Japan which would qualify for VAT zero-rating.

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[2] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 201326, February 8, 2017.

[3] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, June 29, 2005.

[4] *Id.*

[5] Sec. 108 (B), NIRC of 1997, as amended.

[6] *Commissioner of Internal Revenue vs. CITCO International Support Services Limited-Philippine ROHQ*, CTA EB No. 2015, November 29, 2019.

While petitioner was able to submit proof of incorporation/registration of Marubeni Corporation, it failed to submit a SEC Certification of Non-Registration of Company for the same. As stated in the assailed Decision, "[t]he SEC Certification of Non-Registration of Company submitted in evidence by petitioner explicitly states that there exists a company name "Marubeni Corporation" registered with the SEC."

Truth to tell, the SEC Certification expressly stated that there is a registered company named "Marubeni Corporation", yet, petitioner failed to prove that such corporation is different or is separate and distinct from the Marubeni Corporation to whom it rendered services.

Petitioner invokes *Marubeni Corporation (formerly Marubeni – Iida, Co., Ltd.) vs. Commissioner of Internal Revenue and Court of Tax Appeals*[7] in arguing that for VAT refund purposes, a foreign corporation, albeit maintaining a branch office in the Philippines, may be considered as an NRFC if transactions are done directly with the foreign corporation and independently of its Philippine branch.

The *Marubeni case* involved Marubeni Corporation's **claim for refund or issuance of a tax credit in the amount of ₱229,424.40 representing profit tax remittance erroneously paid on the dividends remitted by Atlantic Gulf and Pacific Co. of Manila (AG&P) to Marubeni Corporation**. The issue therein was whether or not the dividends received by Marubeni Corporation from AG&P are effectively connected with its conduct of business in the Philippines (through its Philippine branch) as to be considered branch profits subject to the 15% branch profit remittance tax.

The Supreme Court ruled that income derived by a foreign corporation <u>directly and independently</u> of its branch office in the Philippines cannot be attributed to the branch office. Though Marubeni Corporation has a Philippine branch, **the latter had no participation whatsoever in the investment that was made by Marubeni Corporation in AG&P of Manila**. Hence, the Philippine-sourced income derived through the payment of dividends by AG&P of Manila to Marubeni Corporation shall be considered as income of Marubeni Corporation and shall not be attributed to its Philippine branch.

Petitioner's reliance on the *Marubeni case* is misplaced.

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[7] Hereinafter called *"Marubeni* case", G.R. No. 76573, September 14, 1989.

The Marubeni case involves **income derived by a foreign corporation** from its investment in the Philippines while the present case involves **sales made by petitioner to a foreign corporation** which is found to be doing business in the Philippines.

The *Marubeni case* enunciated the doctrine that the Philippine branch of a foreign corporation possesses a separate and distinct personality from that of its head office **for income tax purposes**. Thus, when a foreign corporation transacts business in the Philippines **independently** of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporation, and not of its Philippine branch. For **income tax purposes**, the taxpayer is the foreign corporation, not the branch of the resident foreign corporation.

In a claim for refund of input VAT attributable to zero-rated sales, however, Section 108(B)(2) of the NIRC of 1997, as amended, is explicit that in order for a sale of services to be considered as zero-rated, the recipient of the services must be a foreign corporation engaged in business outside of the Philippine or a non-resident person not engaged in business who is outside the Philippines when the services were performed.

For VAT purposes, sales to a foreign corporation that maintains a branch office in the Philippines, **regardless of the latter's participation in the transaction**, would suffice to remove the transaction within the ambit of Section 108(B)(2) of the NIRC of 1997, as amended. The foreign corporation is deemed to be doing business in the Philippines through its branch office, thus, the services rendered to it would not qualify for VAT zero-rating.

In the subject Motion for Reconsideration, petitioner admitted that Marubeni Corporation has a branch in the Philippines, *viz.*:

> "It should be noted that the Marubeni Corporation (SEC Reg. No. F000000493) that is mentioned in the SEC Negative Certification refers to the Philippine branch office of Marubeni Corporation – Japan, the same company that is mentioned in the above-quoted Supreme Court Decision."[8]

Since petitioner admitted that its client Marubeni Corporation has a branch in the Philippines, it cannot now claim that Marubeni Corporation should be considered an NRFC doing business outside of the Philippines. Petitioner cannot subsequently take a position contrary to or inconsistent with what was pleaded.[9]

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[8] Paragraph 7, Petitioner's Motion for Reconsideration, CTA EB Docket, p. 356.
[9] *Republic of the Philippines vs. Thi Thu Thuy De Guzman*, G.R. No. 175021, June 15, 2011.

Accordingly, petitioner's sales to Marubeni Corporation may not be considered as VAT zero-rated sales.

Petitioner failed to prove that the services it rendered for Bomag Fayat Group is other than "processing, manufacturing or repacking goods"

With respect to its sales to Bomag Fayat Group, petitioner claims that the uncontroverted testimony of its witness, Mr. Yusuke Yamada, establishes that the services it rendered to Bomag Fayat Group were other than "processing, manufacturing or repacking goods."

Petitioner's contention is without merit.

The Court *En Banc* cannot give full weight and credence to the unrebutted testimony of petitioner's witness anent the nature of the actual services rendered by petitioner to Bomag Fayat Group. His testimony is not corroborated by any reliable or competent evidence to prove to the Court *En Banc*'s satisfaction that the services rendered to Bomag Fayat Group were indeed other than "processing, manufacturing or repacking goods." Petitioner failed to present proof of any contract or service agreement it executed with its client to show the kind of services it performed. Hence, the Court *En Banc* is unable to verify whether any service other than "processing, manufacturing or repacking of goods" was rendered by petitioner in the Philippines in favor of Bomag Fayat Group.

The E2M schedule is not sufficient proof that the input taxes have been paid

With respect to the disallowance of input taxes on certain importations due to failure to present the required Statement of Settlement of Duties and Taxes (SSDTs), the Court *En Banc* reiterates that the submitted E2M schedule is not sufficient to prove the fact of payment of the required duties and taxes thereon.

Petitioner submitted SSDTs along with the corresponding Import Entry and Internal Revenue Declaration (IEIRDs) to prove its input taxes on importations. With respect, however, to those importations under Exhibits "P-156", "P-158", "P-160", and "P-162", the input taxes from these importations were supported by IEIRDs only.

Customs Administrative Order (CAO) No. 10-2008[10] dated November 12, 2008 has discontinued the practice of having to present the IEIRD / Single Administrative Document (SAD) to authorized agent banks for machine validation. Under the electronic-to-mobile (E2M) customs system, the BOC issues the SSDT to the importer for those with complete payment of customs duties and taxes. Thus, the SSDT is the definitive proof, in lieu of a BOC-issued official receipt, that the customs duties and taxes applicable to a certain importation have been paid.

As stated in the assailed Decision, the E2M Schedule shows the list of importations made by petitioner in 2015 with the Broker, Supplier, Port, RegDate, AsmtDate, Entry Nos., HS Code, Description, Bill Lading, Value, Duties and Taxes, Wharfage, Arrastre, Duty Rate, Custom Duties and VAT due for each importation.[11] There is nothing therein that indicates that the duties and taxes on these importations were indeed paid by petitioner to the BOC.

Thus, petitioner's failure to submit the SSDTs for importations under Exhibits "P-156", "P-158", "P-160", and "P-162" is fatal to its refund claim.

Petitioner failed to substantiate its excess input VAT carry-over

Lastly, petitioner claims that the assailed Decision failed to discuss the validity of the amount of carry-over of excess input VAT from previous period totaling to ₱420,477,797.65.

The Court in Division had already discussed in its Decision dated January 22, 2020[12] that petitioner failed to substantiate the carry-over of excess input VAT from previous periods. The relevant portion of the Court in Division's Decision, which the Court *En Banc* affirmed, is as follows:

> "Although petitioner's Amended Quarterly VAT returns for the third and fourth quarters of FY 2015 reflected the respective amounts of ₱359,624,263.99 and ₱420,477,797.65 as "*Input Tax Carried Over from Previous Period*", still, **petitioner failed to substantiate the same.**
>
> Consequently, the input tax carry-over of ₱359,624,263.99 and ₱420,477,797.65 cannot be validly applied against petitioner's output

[10] Subject: Payment Application Secure System Version 5.0 (PASS5).
[11] Exhibit "P-197".
[12] CTA EB Docket, pp. 27-74.

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> tax pursuant to Section 110(A) in relation to Section 110(B) of the NIRC, as amended, which states:
>
> > SEC. 110. *Tax Credits.* –
> >
> > (A) *Creditable Input Tax.* –
> >
> > (1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax:
> >
> > xxx xxx xxx
> >
> > (B) *Excess Output or Input Tax.* – If at the end of any taxable quarter the output tax exceeds the input tax, the excess shall be paid by the Vat-registered person. If the input tax exceeds the output tax, the excess shall be carried over to the succeeding quarter or quarters: xxx."
>
> It is worthy to stress that in claiming excess or unutilized input VAT from zero-rated transactions, it is the excess input tax over the output tax which should be refunded to the taxpayer or credited against other internal revenue taxes. Hence, it is important for the taxpayer to prove that it has enough prior year's excess input tax credits to cover its output tax liability for the current taxable year. In cases filed before this Court, which are litigated *de novo*, party-litigants must prove <u>every minute aspect</u> of their case."[13] (*Boldfacing supplied*).

Actions for tax refund or credit are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. 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 taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[14]

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

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

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[13] CTA EB Docket, pp. 71-72.

[14] *Coca-Cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
Associate Justice