REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PROCTER & GAMBLE ASIA PTE. LTD., Petitioner,	**CTA EB NO. 2301** *(CTA Case Nos. 7581 and 7639)*
	Present:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO,** and **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	NOV 24 2021 3:57 p.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review[1] filed by Procter & Gamble Asia Pte. Ltd. on August 24, 2020 assailing the November 29, 2019 Decision[2] and June 10, 2020 Resolution[3] promulgated by the Special Second Division (Court in Division) in CTA Case Nos. 7581 and 7639 entitled *Procter & Gamble Asia Pte. Ltd. versus Commissioner of Internal Revenue.*

The dispositive portions of the assailed Decision and Resolution state:

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[1] CTA EB Docket, pp. 10-85 (*inclusive of annexes*).
[2] Penned by Associate Justice Erlinda P. Uy, with Associate Justice Juanito C. Castañeda, Jr., concurring; CTA EB Docket, pp. 32-54.
[3] Penned by Associate Justice Erlinda P. Uy, with Associate Justice Juanito C. Castañeda, Jr., concurring; CTA EB Docket, pp. 61-63.

November 29, 2019 Decision

"**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for insufficiency of evidence.

SO ORDERED."

June 10, 2020 Resolution

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

SO ORDERED."

THE PARTIES

Petitioner is a foreign corporation duly organized and existing under the laws of Singapore. It was granted by the Securities and Exchange Commission (SEC) a license to do business as a Regional Operating Headquarters (ROHQ) in the Philippines.[4] It provides management, marketing, technical and financial advisory, and other qualified services to related companies as specified in its Certificate of Registration and License issued by the SEC.[5] It is a VAT-registered taxpayer as shown in the Certificate of Registration No. 9RC0000071787 issued by Bureau of Internal Revenue (BIR).[6]

Respondent is the Commissioner of the BIR,[7] authorized to, among others, refund or credit taxes pursuant to Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended.[8] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

FACTS

The undisputed facts of the case, as narrated by the Court in Division and supported by evidence, are as follows:

"Petitioner filed its Monthly VAT Declarations and Quarterly VAT Returns on the following dates:

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[4] Item No. 10, The Parties, Petition for Review, CTA EB No. 2301 Docket, p. 11.
[5] The Facts, Decision, CTA Case Nos. 7581 and 7639, CTA EB No. 2301 Docket, p. 33 citing Exhibit "A", Paragraph 1, Admitted Facts by Petitioner and Respondent, Consolidated Joint Stipulation of Facts and Issues (CJSFI), [CTA Division] Docket, p. 239.
[6] The Facts, Decision, CTA Case Nos. 7581 and 7639, CTA EB No. 2301 Docket, p. 33.
[7] The incumbent Commissioner of the BIR is Hon. Caesar R. Dulay.
[8] Item No. 11, The Parties, Petition for Review, CTA EB No. 2301 Docket, p. 11.

VAT Return/Declaration	Date Filed (Original)	Date Filed (Amended)
January (monthly)	February 21, 2005	
February (monthly)	March 18, 2005	
Ending March (quarterly)	April 25, 2005	March 19, 2007
April (monthly)	May 20, 2005	
May (monthly)	June 21, 2005	
Ending June (quarterly)	July 26, 2006	March 20, 2007

On March 22, 2007 and May 2, 2007, petitioner filed applications and letters addressed to the BIR Revenue District Office (RDO) No. 49, requesting the refund or issuance of tax credit certificates of its input [value-added tax (VAT)] attributable to its zero-rated sales covering the taxable periods of January 2005 to March 2005, and April 2005 to June 2005, respectively.

Considering that petitioner's claims for refund or tax credit remain unresolved by [respondent], petitioner filed two separate Petitions for Review before [the Court in Division], as follows:

1) CTA Case No. 7581 was filed on March 28, 2007 seeking the refund or the issuance of a tax credit certificate in the amount of ₱23,090,729.17, representing petitioner's input VAT paid on goods or services attributable to its zero-rated sales for the taxable period covering January 2005 to March 2005;

2) CTA Case No. 7639 was filed on June 8, 2007 seeking the refund or the issuance of tax credit certificate in its favor in the amount of ₱19,006,753.58 representing petitioner's unutilized input VAT paid on goods and services attributable to its zero-rated sales for the taxable period from April 2005 to June 2005."

Upon petitioner's motion, the Court in Division consolidated the Petitions for Review in a Resolution dated July 30, 2007.[9]

After trial, the Court in Division promulgated a Decision on November 17, 2010,[10] dismissing the consolidated Petitions for Review

[9] Resolution dated July 30, 2007, CTA Case No. 7639 Docket Vol. I, p. 207.
[10] CTA Case No. 7581 Docket Vol. III, pp.1427-1443.

for having been prematurely filed. The dispositive portion thereof reads:

> "**WHEREFORE**, in view of the foregoing considerations, the instant Petitions for Review docketed as CTA Case Nos. 7581 and 7639 are hereby **DISMISSED** for having been prematurely filed.
>
> **SO ORDERED**. "

On December 2, 2010, petitioner filed a Motion for Reconsideration,[11] which was denied by the Court in Division for lack of merit in the Resolution dated March 9, 2011.[12]

On March 23, 2011, petitioner filed a Petition for Review with the Court *En Banc*, docketed as CTA EB No. 742.[13] On September 21, 2012, the Court *En Banc* promulgated a Decision, dismissing the Petition for Review for lack of merit.[14]

On October 18, 2012, petitioner filed a Motion for Reconsideration,[15] which was likewise denied by the Court *En Banc* in the Resolution dated January 30, 2013[16] for lack of merit.

On March 27, 2013, petitioner filed a Petition for Review on Certiorari with the Supreme Court, entitled "*Procter and Gamble Asia Pte Ltd. versus Commissioner of Internal Revenue*", docketed as G.R. No. 105652.[17]

On September 6, 2017, the Supreme Court rendered a Decision,[18] granting the Petition for Review. The dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant petition for review is hereby GRANTED. The Decision dated September 21, 2012 and the Resolution dated January 30, 2013 of the CTA *En Banc* in C.T.A. EB Case No. 742 are hereby REVERSED AND SET ASIDE.

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[11] CTA Case No. 7581 Docket Vol. III, pp. 1445-1463.
[12] CTA Case No. 7581 Docket Vol. III, pp. 1467-1471.
[13] CTA EB No. 742 Docket, pp. 1-28.
[14] CTA Case No. 7581 Docket Vol. III, pp. 1971-1994.
[15] CTA Case No. 7581 Docket Vol. III, pp. 1995-2012.
[16] CTA Case No. 7581 Docket Vol. III, pp. 2014-2018.
[17] CTA Case No. 7581 Docket Vol. IV, pp. 2052-2079.
[18] CTA Case No. 7581 Docket Vol. IV, pp. 2549-2557.

> Accordingly, CTA Case Nos. 7581 and 7639 are REINSTATED and REMANDED to the CTA Special Second Division for the proper determination of the refundable amount due to petitioner Procter & Gamble Asia Pte Ltd., if any.
>
> **SO ORDERED.**"

Respondent filed his Motion for Reconsideration of the Decision of the Supreme Court dated September 6, 2017,[19] but the same was denied with finality by the Supreme Court in the Resolution[20] dated March 5, 2018.

On March 5, 2018, the Supreme Court issued an Entry of Judgment, stating that the Decision dated September 6, 2017 rendered in G.R. No. 205652 has become final and executory.[21]

Accordingly, the CTA *En Banc* issued the Resolution dated September 25, 2018,[22] remanding CTA Case Nos. 7581 and 7639 to the Special Second Division for proper determination of the refundable amount due to petitioner.

On November 29, 2019, the Court in Division promulgated a Decision[23], which denied the Petition for Review, *viz.*:

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

On December 19, 2019, petitioner filed its Motion for Reconsideration (Re: Decision dated November 29, 2019),[24] seeking the reconsideration of the Court in Division's Decision dated November 29, 2019. Respondent filed its Manifestation and Motion on February 3, 2020, adopting the factual findings and legal conclusions made by the Court in Division in the November 29, 2019 Decision.[25]

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[19] CTA Case No. 7581 Docket Vol. V, pp. 2559-2567.
[20] CTA Case No. 7581 Docket Vol. IV, p. 2569.
[21] CTA Case No. 7581 Docket Vol. IV, p. 2577.
[22] CTA Case No. 7581 Docket Vol. IV, pp. 2574-2575.
[23] CTA Case No. 7581 Docket Vol. V, pp. 2588-2610.
[24] CTA Case No. 7581 Docket Vol. V, pp. 2611-2616.
[25] CTA Case No. 7581 Docket Vol. V, pp. 2622-2624.

On June 10, 2020, the Court in Division promulgated the assailed Resolution,[26] denying petitioner's Motion for Reconsideration for lack of merit.

Dissatisfied, petitioner filed on August 24, 2020 the present Petition for Review before the Court *En Banc*.[27]

In the Resolution dated October 22, 2020, respondent was ordered to file his comment on the Petition for Review within ten (10) days from notice.[28]

Per Records Verification dated January 21, 2021, respondent failed to file his comment on the Petition for Review.[29]

On February 17, 2021, the Court submitted the case for decision.[30]

Hence, this Decision.

THE ISSUES[31]

Petitioner raises the following issues for the Court *En Banc's* resolution:

1. Whether the Court in Division erred in ruling that petitioner failed to show that its sales of services qualify for Value-Added Tax (VAT) zero-rating for the periods covering January 2005 to March 2005, and April 2005 to June 2005;

2. Whether petitioner has carried-over to the succeeding taxable quarters the alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales for the periods January 2005 to March 2005 and April 2005 to June 2005;

3. Whether the amounts of ₱23,090,729.17 and ₱19,006,753.58 being claimed by petitioner as unutilized

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[26] CTA Case No. 7581 Docket Vol. V, pp. 2629-2631.
[27] Supra note 1.
[28] CTA EB 2301 Docket, pp. 93-94.
[29] CTA EB 2301 Docket, p. 95.
[30] CTA EB 2301 Docket, pp. 97-98.
[31] CTA EB 2301 Docket, pp. 13-14.

input VAT for the periods covering January 2005 to March 2005 and April 2005 to June 2005, respectively, pertains in full to its zero-rated sales of services for the respective periods;

4. Whether petitioner complied with the substantiation requirements prescribed under Revenue Regulation No. 7-95 in relation to Sections 113 and 327 of the National Internal Revenue Code (NIRC) of 1997, as amended; and,

5. Whether petitioner is entitled to its claimed refund or tax credit certificate in the amount of ₱23,090,729.17 and ₱19,006,753.58 as alleged unutilized input VAT paid on goods and services attributable to its zero-rated sales for the periods covering January 2005 to March 2005 and April 2005 to June 2005, respectively.

PETITIONER'S ARGUMENTS[32]

Petitioner argues that:

(i) its affiliates abroad are engaged in business conducted outside the Philippines as evidenced by the affidavits executed by the respective officers of such affiliates with attached proof of business registrations;

(ii) the Service Agreements executed by petitioner and its affiliates indicate where such affiliates conduct their businesses;

(iii) the considerations for the services rendered to its affiliates abroad were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP) as shown in the Citibank Certification of Inward Remittances; and,

(iv) the services were performed in the Philippines as supported by the statement found in the Report of the Court-commissioned Independent Certified Public Accountant (ICPA).

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[32] Discussions, Petition for Review, CTA EB Docket, pp. 14-23.

THE COURT *EN BANC'S* RULING

The Petition was timely filed

Section 18 of Republic Act (R.A.) No. 1125, as amended by R.A. No. 9282,[33] *vis-à-vis* Section 3 (b), Rule 8 of the 2005 RRCTA,[34] provides that a party adversely affected by a decision or a resolution of a Division of the Court on a motion for reconsideration or new trial, may file a petition for review with the Court *En Banc* within fifteen (15) days from receipt of the questioned decision or resolution.

The assailed Resolution dated June 10, 2020, which denied petitioner's Motion for Reconsideration of the Court in Division's November 29, 2019 Decision, was received by petitioner's counsel on July 7, 2020.[35] On July 21, 2020, petitioner filed a Motion for Extension of Time to File Petition for Review,[36] which was granted in the Minute Resolution dated July 28, 2020,[37] giving petitioner until August 6, 2020, within which to file its Petition for Review.

On August 3, 2020, the Supreme Court issued Administrative Circular (AC) No. 43A-2020,[38] suspending from August 4 to 18, 2020, the reglementary periods for the filing of petitions, appeals, complaints, motions, pleadings and other court submissions before the courts, and resuming the same on August 19, 2020.

Petitioner had three (3) days left for filing the Petition for Review when the reglementary period was suspended on August 4, 2020. Hence, counting three (3) days from August 19, 2020 (the date when the reglementary period resumed), petitioner had until August 21, 2020 within which to file the Petition for Review. Since August 21, 2020 was a holiday (Ninoy Aquino Day) and August 22 and 23, 2020 fell on a Saturday and

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[33] SEC. 18. Appeal to the Court of Tax Appeals En Banc. - No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.

[34] SEC. 3. *Who may appeal; period to file petition.* – xxx

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

[35] Notice of Resolution, CTA Case No. 7581 Docket Vol. V, p. 2628.

[36] CTA EB No. 2301 Docket, pp. 1-3.

[37] CTA EB No. 2301 Docket, p. 9.

[38] Addendum to Administrative Circular No. 43-2020.

a Sunday, respectively, petitioner had until August 24, 2020, within which to file the Petition for Review.

Accordingly, the Petition for Review filed by petitioner on August 24, 2020 is clearly within the prescribed period. Thus, Court *En Banc* can properly take cognizance of the present case.

Proof that petitioner's affiliates are non-resident foreign corporations doing business outside the Philippines

The assailed Decision disallowed the zero-rated sales made to "Procter & Gamble Technical Centers LTD" because of petitioner's failure to present a SEC Certificate of Non-Registration. Moreover, the zero-rated sales pertaining to the following service-recipients were likewise disallowed for petitioner's failure to submit proof of incorporation in foreign country:

1. Procter & Gamble Indochina;
2. Procter & Gamble International Operations AG (Home Division);
3. Procter & Gamble Manufacturing (Thailand) LTD;
4. Procter & Gamble Manufacturing PTY LTD;
5. Procter & Gamble Vietnam LTD; and,
6. Ssangyong Paper Company Limited.

Petitioner argues that its affiliates abroad are engaged in business conducted outside the Philippines. According to petitioner, the affidavits executed by the respective officers of petitioner's affiliates abroad, with attached proof of business registration of the respective affiliates duly authenticated by consuls of the Republic of the Philippines, conclusively prove that said affiliates are indeed registered abroad and doing business outside the Philippines. Moreover, petitioner asserts that while the respective Preambles of the Service Agreements indicate that petitioner's respective affiliates abroad conduct their business in some specific countries or areas, the Certificates of Non-Registration of Corporation/Partnership issued by the Philippine SEC indubitably prove that said affiliates are not doing business in the Philippines.

For the aforesaid affiliates to be considered as non-resident foreign corporations (NRFCs) doing business outside the Philippines, each entity must be supported, at the very least, by **both the (1) SEC**

Certificate of Non-Registration of Corporation/Partnership AND (2) proof of foreign incorporation/registration (i.e., Certificate/Articles of Foreign Incorporation/Association or printed screenshots of the US SEC Website showing the state/province/country where the entity was organized[39], or Tax Residence Certificate[40]).

In *Commissioner of Internal Revenue vs. Deutsche Knowledge Services Pte. Ltd.,*[41] the Supreme Court reiterated that both the SEC Certification of Non-Registration and proof of foreign corporation are necessary to establish the NRFC status of a foreign affiliate, and that service agreements or contracts by themselves would not suffice to prove such status, *viz.*:

> "In any case, after a judicious review of the records, the Court still do [sic] not find any reason to deviate from the court *a quo*'s findings. To the Court's mind, the **SEC Certifications of Non-Registration show that their affiliate are foreign corporations**. On the other hand, **the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines** are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.
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> Proof of the abovementioned second component sets this case apart from *Accenture, Inc. v. Commissioner of Internal Revenue* and *Sitel Philippines Corp. v. Commissioner of Internal Revenue.* In these cases, the claimants similarly presented SEC Certifications and client service agreements. However, the Court consistently ruled that documents of this nature only establish the *first* component (*i.e.*, that the affiliate is foreign). The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component (*i.e.*, that the affiliate is not doing business here in the Philippines) shall be fatal to a claim for credit or refund of excess input VAT attributable to zero-rated sales." (*Boldfacing supplied*)

Contrary to petitioner's stance, the affidavits of the respective officers of the foreign affiliates and the service agreements, *sans* any proof of foreign incorporation, are insufficient to establish the NRFC status of its affiliates. For petitioner's failure to submit its affiliate's articles of association and/or certificates of incorporation, the Court in Division correctly ruled that petitioner's sales to its aforementioned affiliates do not qualify as zero-rated for VAT purposes.

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[39] *Commissioner of Internal Revenue vs. CITCO International Support Services Limited-Philippines ROHQ*, CTA EB No. 2015 (CTA Case No. 9102), June 5, 2020 Resolution.
[40] *Chevron Holdings, Inc. vs. Commisisoner of Internal Revenue*, CTA Case No. 8946, March 14, 2018.
[41] G.R. No. 234445, July 15, 2020.

Proof that acceptable foreign currency exchange proceeds were duly accounted for in accordance with BSP Rules and Regulations is insufficient.

In the assailed Decision, the Court in Division ruled that proceeds from petitioner's zero-rated sales in the total amount of ₱421,853,558.25 cannot be traced to the Certifications of Inward Remittances that petitioner offered in evidence.

A mere claim that the remittances pertaining to these zero-rated sales were supported by Citibank Certifications of Inward Remittances issued by Citibank NA, Philippine Branch and duly affirmed by the testimony of bank representative, Teresita Sugay, without pointing out which parts or items in the Certification correspond to the alleged ₱421,853,558.25 zero-rated sales would not suffice to prove compliance with the requirement that the consideration for the services rendered by petitioner to its affiliates abroad were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

Petitioner invokes the findings of the ICPA that petitioner's sales to its foreign affiliates were paid for in acceptable foreign currency or in US Dollars, *viz.*:

> "Our examination of the Company's accounting and related records pertinent to its claim for refund or TCC representing input VAT credits attributable to zero-rated sales, disclosed the following:
>
> xxx xxx xxx
>
> - Sales made to local affiliates were subjected to 10% VAT. Proceeds from all of the Company's sales to foreign affiliates during the period January 1 to June 30, 2005 were paid for in acceptable foreign currency (in US dollars).
>
> - Upon collection of fees from affiliates, the Company accordingly issued VAT-registered official receipts. These foreign currency remittances are duly supported by the Certifications of Inward Remittance issued by Citibank NA."[42]

[42] ICPA Report, CTA Case Nos.7581 and 7639.

The Court is not bound by the findings of the ICPA. Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA), as amended, 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.**" (*Boldfacing supplied*)

The ICPA's findings are not conclusive upon the Court as the same are subject to its verification, to determine its accuracy, veracity and merit. The Court may either adopt or reject the ICPA Report, wholly or partially, depending on the outcome of its own independent verification.

The Court in Division verified that proceeds from zero-rated sales in the amount of ₱421,853,558.25 cannot be traced to the Certifications of Inward Remittances submitted by petitioner. Petitioner has the duty to show or point out which parts or items in the Certifications of Inward Remittances dated March 23, 2007 and August 30, 2007 issued by Citibank N.A., Philippine Branch, correspond to its alleged zero-rated sales in the amount of ₱421,853,558.25. Petitioner failed to discharge this burden. Thus, the Court in Division correctly disallowed as zero-rated sales the said amount of ₱421,853,558.25 for being unsupported by any proof that said zero-rated sales were paid for in foreign currency and accounted for in accordance with BSP rules and regulations.

Proof that the services were performed in the Philippines is inadequate

Anent petitioner's argument that it rendered services in the Philippines, it likewise invokes the findings of the ICPA in its Report stating that "all such services were performed in the Philippines by the Company's staff based in the Philippines."[43]

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[43] ICPA Report, CTA Case Nos.7581 and 7639.

It must be noted that Section 108(B) of the NIRC of 1997, as amended, specifically provides that in order to qualify for VAT zero-rating, the same must be **performed in the Philippines** by VAT-registered persons. In *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*,[44] the Supreme Court laid down the requirements in order that a supply of service may qualify for VAT zero-rating, *viz.*:

> "However, the law clearly provides for an exception to the destination principle; that is, for a zero percent VAT rate for services that are performed in the Philippines, 'paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the [BSP].' Thus, **for the supply of service to be zero-rated as an exception, the law merely requires that first, the service be performed in the Philippines**; second, the service fall under any of the categories in Section 102(b) of the Tax Code; and, third, it be paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations.
>
> xxx xxx xxx
>
> "The law neither makes a qualification nor adds a condition in determining the tax situs of a zero-rated service. Under this criterion, the place where the service is rendered determines the jurisdiction to impose the VAT. **Performed in the Philippines, such service is necessarily subject to its jurisdiction, for the State necessarily has to have 'a substantial connection' to it, in order to enforce a zero rate**. The place of payment is immaterial; much less is the place where the output of the service will be further or ultimately used." (*Boldfacing supplied*)

It is indispensable that a claimant of tax refund must prove that the services it rendered to its foreign affiliates must have been performed or rendered in the Philippines and not abroad.

As correctly found by the Court in Division, there is no evidence on record that will fully convince this Court that the services rendered by petitioner to its client-affiliates abroad were performed in the Philippines. In petitioner's Formal Offer of Evidence filed on July 3, 2009, petitioner did not offer any specific evidence to establish that the subject services were performed in the Philippines.

Petitioner's mere reliance on the ICPA Report that the services were rendered in the Philippines does not constitute sufficient proof that would meet the requirement of the law. The ICPA Report did not even provide for any reference as to documents or evidence that would show this fact. To reiterate, the Court is not bound to accept the ICPA's

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[44] G.R. No. 152609, June 29, 2005.

findings as it has a duty to independently verify such findings. This is especially true in this case where the ICPA's findings are unsupported by evidence.

Truth to tell, perusal of the Service Agreements[45] submitted by petitioner shows that they contain a standard provision which states that service providers shall not be construed to establish or maintain an office or place of business other than its current and future places of business as deemed appropriate, and shall not provide services to service recipients outside of the service providers' normal place of business, to wit:

> "4.3.2 THE SERVICE PROVIDERS shall render the Services referred to in Article 4.1, provided however that nothing herein shall be construed to require THE SERVICE PROVIDERS to establish or maintain an office or other place of business other than its current and future places of business as deemed appropriate by EACH SERVICE PROVIDER itself or **be construed to require THE SERVICE PROVIDERS to provide the services of its employees, agents, or subcontractors, to SERVICE RECIPIENT outside of THE SERVICE PROVIDERS' normal place of business on other than on an occasional basis.**" (Boldfacing supplied)

The afore-quoted provision refers to "service providers" which means that there are more than one service provider involved in the Service Agreements. True enough, Exhibit "A"[46] which is also a standard exhibit found in some Service Agreements show a list of service providers which includes petitioner's head office and two regional branches, *viz:*

> "1. Procter & Gamble Asia Pte. Ltd., a corporation governed by the laws of the Singapore, having its registered office at **95 South Bridge Road, #10-10, Pidemco Centre, Singapore 058717**
>
> 2. Procter & Gamble Asia Pte. Ltd. – Philippines Branch Office, having its registered office at **20/f Petron Megaplaza Building., 358 Sen. Gil Puyat Ave., Makati, Manila, Philippines**
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> 3. Procter & Gamble Asia Pte. Ltd. – Japan Branch Office, having its registered officer at **17 Koyo-cho Naka 1-chome Higashinada-ku, Kobe 658-0032, Japan**"

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[45] Exhibit "C-1" to "C-26", inclusive of sub-markings, CTA Case Nos. 7581 and 7639.
[46] CTA Case Nos. 7581 and 7639.

Considering that the services may be rendered not only in the Philippines but also in Singapore and in Japan, or outside the normal place of business of the service provider, the Service Agreements submitted by petitioner are not sufficient to prove that the services were rendered in the Philippines.

It bears stressing that a claimant has the burden of proof to establish the factual basis of the claim for tax credit or refund.[47] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[48] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[49]

In view of petitioner's failure to prove that its alleged VAT zero-rated sales were performed in the Philippines, the Court *En Banc* finds that the Court in Division aptly denied petitioner's claim for refund of or issuance of TCC in the aggregate amount of ₱42,097,482.75.

WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit. The Decision dated November 19, 2019 and Resolution dated June 10, 2020 rendered by the CTA Special Second Division are hereby **AFFIRMED.**

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

J. C. Castañeda, J.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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[47] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[48] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.*, G.R. No. 127105, June 25, 1999.
[49] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.

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
MARIAN IVY F. REYES-FAJARDO
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