REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

I-REMIT, INC.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9733

Members:

DEL ROSARIO, *P.J.*, *Chairperson*
and
MANAHAN, JJ.

Promulgated:
FEB 03 2021 10:40 a.m.

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RESOLUTION

MANAHAN, J.:

This resolves petitioner's **Motion for Reconsideration** filed via email on August 10, 2020, without respondent's comment thereon, as per the Resolutions dated October 23, 2020 and December 9, 2020, respectively.

On July 24, 2020, the Court promulgated a Decision denying petitioner's claim for refund of unutilized input value-added tax (VAT) for failing to sufficiently establish that it has zero-rated sales during the third and four quarters of taxable year 2015, the dispositive portion of which reads as follows:

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

In its Motion, petitioner prays that the above Decision be reconsidered and set aside, raising the following grounds in support of its arguments, *viz.*:

I.
RECIPIENTS OF PETITIONER'S SERVICES ARE NONRESIDENTS NOT ENGAGED IN BUSINESS HERE IN THE PHILIPPINES AND ARE OUTSIDE THE PHILIPPINES WHEN THE SERVICES WERE PERFORMED.

II.
PETITIONER'S SERVICES WERE PAID FOR IN ACCEPTABLE FOREIGN CURRENCY AND ACCOUNTED FOR IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BSP.

III.
PETITIONER HAS COMPLIED WITH ALL THE REQUISITES TO SUCCESSFULLY OBTAIN A CREDIT/REFUND OF INPUT VAT.

As to the first ground, petitioner explains that, in denying its claim, the Court noted certain discrepancies in the Securities and Exchange Commission (SEC)'s Certificate of Non-Registration vis-à-vis the incorporation papers, commercial licenses and similar documents of the recipients of petitioner's services. Petitioner clarifies that the supposed discrepancies are only the corresponding foreign companies' formal business structure, such as "Co." or Company, "Ltd." or Limited, "KK" or Kabushi Kaisha (meaning Stock Corporation in Japan), "W.L.L." or With Limited Liability, "LLC" or Limited Liability Company, and "Est" or Establishment. Said terms are not parts of the corporate names but are intended merely to identify the type of business. Also, petitioner asserts that prior to releasing the Certificates of Non-Registration of Company, the Corporate Filing and Records Division of SEC meticulously verified the requested list of corporate names to determine, not only if the same is registered in the Philippines, but also if there is already a company that is registered with a similar name. As such, petitioner points out that should the corporations – as testified by its witness – were indeed distinct from those mentioned in the Certificates of Non-Registration, the SEC would have expressly stated so in the said Certificates.

With regard to the second ground, petitioner assails the finding of this Court that it failed to submit any proof that the services it rendered to its foreign clients were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP). Petitioner emphasizes that during the administrative proceedings, it was able to submit the documents stated in the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund with the Bureau of Internal Revenue (BIR), particularly, *"Items 3 (Local Purchases of Goods and Services), 4 (Sales of Goods or Services), 5 (Dollar Remittances), 6 (Importation of Goods), and 7.1 (Reconciliation of Exports Sales and Dollar Remittances)."* Moreover, petitioner avers that the presentation of the said documents was never put into question by respondent at the administrative and judicial proceedings of this case; and, that respondent's reason in denying its application for tax refund during the administrative proceedings was only due to its alleged failure to present proof that its clients were doing business outside the Philippines, and not because of petitioner's failure to prove that its services were paid for in acceptable foreign currency.

Furthermore, petitioner argues that the case of *Accenture, Inc. v. Commissioner of Internal Revenue,*[1] (*"Accenture case"* hereafter for brevity) is not on all fours with the present case. In the said case, petitioner claims that *Accenture* submitted documentary evidence of sales, receipts of foreign currency payments, and inward remittance proceeds to prove that its clients were doing business outside the Philippines; in contrast with the present case, the existence of sales, receipt of foreign currency payments, and inward remittance proceeds were submitted by petitioner not to prove that its clients were doing business outside the Philippines but to confirm that the transactions were indeed paid for in acceptable foreign currency duly accounted for in accordance with the BSP rules and regulations; and that the BSP Certificates of Registration prove that they are regulated and supervised by the BSP and the transactions thereof are duly accounted for in accordance with the BSP rules.

As to the third ground, petitioner insists that the following enumerated facts would show that it was able to overcome the burden of proving the factual basis of its claim for tax refund, to wit:

1. As to the requirement of timeliness, the Court held that petitioner complied with the first requisite with

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[1] G.R. No. 190102, July 11, 2012. *om*

regard to the 3rd and 4th quarters of 2015. The Court also found that the instant Petition was seasonably filed.

2. Petitioner has already explained its compliance with the requirement in relation to the taxpayer's output VAT in its discourse under the first two grounds.

3. Petitioner is a VAT-registered person/entity as shown in the records.

4. As regards the petitioner's input VAT being refunded, the requirements have been complied with by the petitioner as shown in its Transmittal Letter dated 17 July 2017 together with the Checklist of Mandatory Requirements for Claims for VAT Credit/Refund.

5. Finally, consistent with the doctrine laid down in *Commissioner of Internal Revenue v. American Express International:*

   a. Petitioner regularly renders service to foreign-based customers doing business outside the Philippines in consideration for their inward remittances to local beneficiaries in the Philippines.

   b. Such service is a commercial in nature; carried on for over a sustained period of time; on a significant scale; with a reasonable degree of frequency; and not at random, fortuitous or attenuated. In fact, I-remit engaged in business since 2001 and had been granted tax refunds before as evidenced by tax debit memos.

   c. From the very nature of petitioner's business as a remittance company operating globally, petitioner definitely receives consideration for this service in foreign currency that is accounted for in conformity with law.

d. Petitioner is not an entity exempt under any of our laws or international agreements.

After a thorough review of petitioner's arguments, this Court finds petitioner's Motion for Reconsideration bereft of merit.

As to the first ground raised by petitioner, the Court notes that there was no empirical proof presented other than petitioner's bare allegation to substantiate its claim, that the words "Co." or Company, "Ltd." or Limited, "KK" or Kabushi Kaisha (meaning Stock Corporation in Japan), "W.L.L." or With Limited Liability, "LLC" or Limited Liability Company, and "Est" or Establishment, do not form part of the corporate names of its foreign clients, but intended merely to identify the business structure of the said entities. Thus, petitioner's allegation cannot be accorded credence for lack of evidentiary support. Settled is the rule that bare allegations will not suffice without proof.[2] It is hornbook doctrine that mere allegations do not constitute proof. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[3] Needless to say, it is the duty of the person who asserts something to produce evidence in order to prove it – which, unfortunately, petitioner failed to do so in the present case.

With regard to the second ground, petitioner claims that it need not submit anymore additional proof of the fact that the services it rendered to its foreign clients were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP since during the administrative proceedings of this case, the BIR never put into question the documents it submitted thereto.

This Court does not agree. Petitioner seems to lose sight of the fact that Section 8 of Republic Act No. 1125 (An Act Creating the Court of Tax Appeals) provides categorically that the Court of Tax Appeals shall be a court of record and as such it is required to conduct a formal trial *(trial de novo)*, as

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[2] *Ma. Ana Consuelo A.S. Madrigal v. Department of Justice, et al.*, G.R. No. 168903, June 18, 2014.

[3] *Government Service Insurance System v. Prudential Guarantee and Assurance, Inc., et al.*, G.R. No. 165585, November 20, 2013. om

judicial claims are litigated *de novo* and decided based on what has been presented and formally offered by the parties during the trial. Consequently, parties thereto must prove every minute aspect of the claim.[4] And, considering that a claim for tax refund partakes of the nature of a tax exemption, it is therefore strictly construed against the taxpayer claimant. It is incumbent upon petitioner to prove not only its entitlement to the grant of the claim under substantive law, but also its compliance with all the documentary and evidentiary requirements provided by the 1997 National Internal Revenue Code (NIRC), as amended, as well as by its implementing revenue regulations.[5]

The mere fact that petitioner was able to submit proof during the administrative proceeding with the BIR of the services it rendered to its foreign clients that were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, does not by itself justify the automatic judicial grant of refund or tax credit in this case. In resolving petitioner's claim, this Court is not precluded from requiring additional documentary evidence from petitioner after having evaluated the documents presented during trial. As initially found by this Court, it needed to go through the supporting bank credit advice, certificate of bank remittance or any other document proving payment for the goods in acceptable foreign currency or its equivalent in goods and services of the alleged export sales to ensure that the goods subject of the zero-rated sales were indeed exported and that the foreign currency given in payment for the said goods were in fact inwardly remitted to the Philippines, before any claim for tax refund is granted.

Also, the Court cited the *Accenture case* simply to emphasize the ruling of the Supreme Court that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation." In fact, the said case was cited in correlation with the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,*[6] wherein it was further required that there must not be any indication that the

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[4] *Kepco Philippines Corp. v. Commissioner of Internal Revenue*, G.R. No. 179356, December 14, 2009.
[5] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.
[6] G.R. No. 153205, January 22, 2007.

recipient of the services is doing business in the Philippines. Taking the foregoing cases into account, the Court maintains its conclusion that only twelve (12) out of the forty-seven (47) foreign clients of petitioner shall be considered as non-resident foreign corporations doing business outside the Philippines, in view of the fact that the said entities were duly supported by **both** the SEC Certificate of Non-registration of corporation/partnership **and** proof of incorporation, association or registration in a foreign country.

Lastly, since it has already been established that petitioner failed to submit any proof that the services it rendered to its foreign clients were paid for "*in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP,* then it is no longer necessary for the Court to once again discuss its compliance with the other requisites for refund.

All told, the Court finds no cogent or compelling reason to reverse or modify the conclusions arrived at in the assailed Decision.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice