REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

DEUTSCHE KNOWLEDGE SERVICES, PTE LTD., Petitioner,	CTA CASE NOS. 8623, 8656, 8661 & 8685
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated:
	DEC 15 2017 3:56 p.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On August 4, 2017, the Court rendered a Decision, the *fallo* of which reads:

> **WHEREFORE**, the present Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the reduced amount of ₱17,188,625.90, representing its unutilized and excess input VAT attributable to zero-rated sales for the first, second, third, and fourth quarters of calendar year 2011.
>
> **SO ORDERED.**[1]

Both respondent and petitioner filed their respective Motions for Partial Reconsideration dated August 18 and 24, 2017.

[1] Docket, p. 4074.

Respondent's Motion for Partial Reconsideration

Respondent ascribes error on the Court's ruling that petitioner is entitled to a partial refund of ₱17,188,625.90, as there is no showing that the said amount bears a direct relation to petitioner's zero-rated activity. That being the case, petitioner's claim for input VAT refund should be disallowed in its entirety.

Respondent also claims that the data in petitioner's VAT Returns for taxable year (TY) 2013 must be totally ignored for it is a product of the latter's self-serving representation. In his view, petitioner must demonstrate by concrete proof that the amount claimed was not utilized in the succeeding quarters of 2014. Allegedly, petitioner's failure to present its 2014 VAT Returns leads to a conclusion that its input VAT claim was consumed in the succeeding taxable quarters.

On the contrary, says petitioner, it was able to establish that the input VAT subject of the refund is directly imputable to its zero-rated sales. Citing portions of the challenged Decision and findings of the Independent Certified Public Accountant (ICPA), it claims that the input VAT for CY 2011 was properly substantiated with both testimonial and documentary evidence. Hence, its claim for refund is in order.

It likewise disagrees with respondent's perception that the data contained in its VAT Returns for TY 2013 was self-serving. Citing jurisprudence,[2] it explains that the information stated in a tax return is presumed to be lawful and accurate. Further, the said information was adequately supported by the declaration in open court of its witness Rachel Concepcion. To add, its 2013 VAT Returns were prepared *ante litem motam* or not in anticipation of litigation, thus, must be accorded evidentiary weight. All these taken together reveal that the subject claim remains unutilized or unused in the succeeding taxable quarters.

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[2] *SMI-ED Philippines Technology, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 175410, November 12, 2014.

Petitioner's Motion for Partial Reconsideration with Motion to Reopen Trial

Petitioner alleges that the Court erred in declaring a portion of its sales disqualified for VAT zero-rating on the ground that it failed to prove that all its clients were foreign entities doing business outside the Philippines. It points out that the Securities and Exchange Commission (SEC) Certificates of Non-Registration coupled with its IGSA with various clients,[3] as well as business registration documents found in the Deutsche AMInet database show that its customers are non-resident foreign corporations. On account thereof, its sales of services are 100% zero-rated per Section 108(B)(2) of the NIRC, as amended.

It should likewise not be faulted for its supplier's neglect to strictly adhere with the invoicing requirements set forth under Sections 110 and 113 of the NIRC, as amended. The responsibility of indicating the amount of VAT as a separate item in a VAT invoice or official receipts (O.Rs) lies with the supplier of goods or services and not with petitioner. Further, the amount of input tax may be readily computed from the information contained on the said documents. For that reason, an additional amount of unutilized input tax claim to the extent of ₱73,793,995.98 should be granted.

Likewise, there is no basis for the Court to deny petitioner's input tax claim of ₱5,382,960.55 as it was already disallowed by the Independent Certified Public Accountant (ICPA) in his ICPA Report.

Grounded upon the information stated in its Quarterly VAT Return (BIR Form 2550-Q) for the 4th Quarter of CY 2011, petitioner submits that it has excess input taxes amounting to ₱256,549,780.80, clearly sufficient to cover its entire input tax claim for the four quarters of CY 2011 amounting to ₱153,201,143.71.

Finally, invoking substantial interest of justice and the tenet that this tribunal is not bound by the technical niceties

[3] IntraGroup Service Agreements.

of the Rules of Court, petitioner prays that it be allowed to present various SEC Certificates of Non-Registration to fully ventilate the merits of the case and accordingly prove its entitlement to additional input tax for the covered period.

By way of comment, respondent, echoing the Court's findings in the challenged Decision, maintains that petitioner failed to demonstrate that all of its clients are foreign entities conducting business outside the Philippines, hence, its services are not VAT zero-rated per Section 108(B)(2) of the NIRC, as amended, and that the VAT O.Rs and/or invoices it presented fell short of meeting the invoicing and substantiation requirements mandated in Sections 110 and 113 of the same Code.

THE RULING OF THE COURT

Respondent's Motion for Partial Reconsideration

On whether petitioner has proved that its input taxes are attributable to its zero-rated sales of services, the same was determined and passed upon by the Court in the challenged Decision of August 4, 2017, particularly in pages 24 to 36 thereof. To repeat, petitioner has clearly established by convincing proof that it is entitled, albeit partially, in the aggregate amount of ₱17,188,625.90, pertaining to its excess and unutilized input tax attributable to its zero-rated sales for the four quarters of CY 2011.

Similarly, the issue on petitioner's non-utilization of claimed input taxes for the four quarters of CY 2011 was laid to rest by the Court in pages 36 to 38 of the same Decision. To reinvent what has been decreed upon is surely a waste of time and resources of the Court. Hence, respondent's Motion for Partial Reconsideration must be denied.

Petitioner's Motion for Partial Reconsideration with Motion to Reopen Trial

Are petitioner's sales of services 100% zero-rated? The answer is in the negative.

To qualify for zero-rating under Section 108(B)(2) of the NIRC, as amended, petitioner must prove that it rendered services to foreign entities not conducting business in the Philippines.[4] This may be proved by presenting their clients' SEC Certificates of Non-Registration and Certificates of Foreign Registration/Incorporation/Association, no less.

As found by the Court in pages 15 to 19 of the challenged Decision, only six (6)[5] of petitioner's client-corporations were complemented by both a SEC Certificate of Non-Registration and Certificate of Foreign Registration/Incorporation/Association. Hence, only the said entities may be considered for VAT zero-rating per Section 108(B)(2) of the NIRC, as amended.

Equally unavailing is petitioner's posture that it is entitled to additional input VAT refund in the total amount of ₱79,176,956.52.[6]

The ruling of the High Court in *Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue*[7] is instructive. A VAT-registered taxpayer is strictly required to present VAT O.Rs or invoices which are in harmony with all the substantiation requirements set forth under the NIRC, as amended and its implementing regulations. No valid input taxes can be demanded for non-compliant VAT O.Rs and/or invoices.

Here, the Court weighed the various O.Rs and invoices presented by petitioner and found that a part[8] thereof failed to pass the benchmark of substantiation provided under Sections 110(A) and 113(A) and (B) of the NIRC, as amended. As such, no input tax may be claimed on said VAT O.Rs and invoices. Hence, the disallowance of the

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[4] See *Accenture, Inc. vs. Commissioner of Internal Revenue,* 690 Phil. 676 (2012).

[5] Deutsche Asia Pacific Holdings Pte Ltd., Deutsche Bank Aktiengesellschaft, Asia Pacific Head Office, Deutsche Bank Aktiengesellschaft, Filiale Jakarta, Deutsche Bank Aktiengesellschaft, Filiale New York and Deutsche Securities Inc.

[6] The amount of ₱73,793,995.98 pertains to disallowance made by the ICPA which was adopted by the Court. While ₱5,382,960.55 relates to a disallowance of input VAT by the Court's own findings. (₱73,793,995.98+₱5,382,960.55= ₱79,176,956.52).

[7] G.R. No. 180173, April 6, 2011.

[8] The lists of non-compliant O.Rs or invoices are found in pages 25 to 36 of the challenged Decision.

resulting input VAT therefrom in the amount of ₱79,176.956.52 is justified.

Neither does the Court find any plausible reason to reopen the case to suit petitioner's cause.

Section 5(a), Rule 30[9] of the Rules of Court is clear and unequivocal. It is during the trial stage where petitioner should adduce evidence in support of its petition for review. However, by way of exception, the Court may allow presentation of evidence even after trial upon showing of <u>special justifiable reasons</u>.

Jurisprudence[10] teaches us that concomitant to a procedure adopting a liberal application of the rules should be an effort on the part of the party invoking liberality to explain its failure to abide by the rules. This petitioner utterly failed to do.

For the grant of its request to reopen the case, petitioner merely cited substantial interest of justice and liberality in compliance with technical rules of procedure by the Court as grounds therefor. In other words, petitioner failed to set forth any compelling reason for the Court to allow the reopening of the case. Accordingly, petitioner's Motion for Reopening of Trial must as well fail.

Invocation of substantial justice is not a magical incantation that will automatically compel the Court to suspend procedural rules. Such tenets are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights.[11]

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[9] **Section 5.** *Order of trial.* — xxx unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:

(a) The plaintiff shall adduce evidence in support of his complaint; xxx

[10] See *Abrenica vs. Law Firm of Abrenica, Tungol and Tibayan, et al.,* G.R. No. 169420, September 22, 2006.

[11] See *Cu-Unjieng vs. Hon. Court of Appeals, et al.,* G.R. No. 139596, January 24, 2006.

WHEREFORE, the Court **DENIES**, for lack of merit:

1. Respondent's and Petitioner's respective Motions for Partial Reconsideration dated August 18 and 24, 2017; and

2. Petitioner's Motion to Reopen Trial incorporated in its Motion for Partial Reconsideration.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice