**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

## SECOND DIVISION

**MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES), LTD.,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 8549**

Members:

**CASTAÑEDA, JR.,** *Chairperson,*
**CASANOVA,** *and*
**COTANGCO-MANALASTAS,** *JJ.*

Promulgated:
MAY 18 2015 3:47 pm

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# RESOLUTION

**CASTAÑEDA, JR., *J.*:**

For this Court's resolution is respondent's **Motion for Reconsideration (Amended Decision dated 13 March 2015)** filed on March 31, 2015, with petitioner's **Comment/Opposition (to Motion for Reconsideration [Amended Decision dated 13 March 2015])** filed on April 20, 2015.

Respondent moves for the reconsideration of the Amended Decision dated March 13, 2015, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, petitioner's Motion for Reconsideration (of the Decision dated 14 November 2014), is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱5,829,398.90, representing petitioner's unutilized excess input VAT attributable to its

zero-rated sales for June 2009 and the 3rd and 4th quarters of 2009.

**SO ORDERED.**"

In challenging the Court's Amended Decision, respondent submits the following arguments:

1. The Court erred in declaring that petitioner is entitled to a refund of a portion of its claimed unutilized input VAT considering that petitioner failed to satisfy the requirement that the recipient of an alleged zero-rated services must be doing business outside the Philippines; and

2. The Court erred in not strictly construing the claim for refund against the petitioner.

Petitioner, on the other hand, opposes respondent's motion on the following grounds:

1. Respondent violated the mandatory Three-Day Notice Rule for motions provided under Section 4, Rule 15 of the Rules of Court; and

2. Respondent does not dispute the Court's finding that petitioner is entitled to claim refund of excess unutilized input VAT arising from its sale of services to A.P. Moller-Maersk A/S under Section 108(B)(4) of the Tax Code.

The Court will first determine whether or not respondent violated the three-day notice requirement in motions.

Petitioner alleges that it received a copy of the Motion for Reconsideration only on April 8, 2015, or merely two (2) days before respondent's requested date of hearing on April 10, 2015. Consequently, respondent violated the three-day notice rule for motions.

The three-day notice requirement in motions is an integral component of procedural due process. "The purpose of the three (3)-

day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein."[1]

Generally the three-day notice requirement is mandatory. However, it is not a hard and fast rule. In the case of *Marylou Cabrera v. Felix Ng*[2], the Supreme Court ruled that:

> "Nevertheless, the three-day notice requirement is not a hard and fast rule. When the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed realized. In such case, the requirements of procedural due process are substantially complied with."

A perusal of the records reveals that respondent served petitioner with a copy of the Motion for Reconsideration through registered mail on March 31, 2015. Furthermore, there was no hearing of the instant case on April 10, 2015. Lastly, petitioner was able to file his Comment/Opposition on respondent's Motion for Reconsideration on April 20, 2015. Thus, petitioner's right to due process was not impinged as it was afforded the chance to argue its position. Respondent therefore did not violate the three-day notice requirement in motions.

The Court will now proceed on the merits of respondent's Motion for Reconsideration.

After a careful evaluation of the parties' arguments, the Court finds respondent's Motion for Reconsideration bereft of merit.

Respondent argues that the Court erred in declaring that petitioner is entitled to a refund of a portion of its claimed unutilized input VAT considering that petitioner failed to satisfy the requirement that the recipient of an alleged zero-rated services must be doing business outside the Philippines.

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[1] *United Pulp and Paper Co. Inc. v. Acropolis Central Guaranty Corporation*, G.R. No. 171750, January 25, 2012, 664 SCRA 65.
[2] G.R. No. 201601, March 12, 2014, 719 SCRA 199.

Respondent hinges her objection to the Amended Decision on Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, wherein one of the requirements for VAT zero-rating is that the recipient of such services must be doing business outside the Philippines.

However, a reading of the Amended Decision dated March 13, 2015 shows that the Court partially granted petitioner's claim for refund of excess unutilized input VAT on the basis of Section 108(B)(4) of the NIRC of 1997, as amended, and not on Section 108(B)(2) of the same code. The pertinent portion of the assailed Amended Decision, reads:

> "We resolve to PARTIALLY GRANT petitioner's motion.
>
> After a careful evaluation of the arguments presented by petitioner and re-examination of the records of the case, petitioner is qualified to claim refund under Section 108(B)(4) of the NIRC of 1997, but NOT under Section 108(B)(2) of the said law.
>
> Petitioner's client, A.P. Moller-Maersk A/S, is actually doing business in the Philippines based on the evidence that 1.5% of the total services rendered to it is allocable to the Philippine portion of the latter's international shipping operations. The Court has extensively discussed this in the assailed Decision, the pertinent portion of which reads:
>
> xxx xxx xxx
>
> In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* the Supreme Court explained why Section 108(B)(2) cannot apply to a VAT taxpayer claiming refund when the recipient of its services does business in the Philippines, to wit:
>
>> xxx In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines. *gr*

> This can only be the logical interpretation of Section 102(b)(2). If the provider and recipient of the "other services" are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. **To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer.** The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution."

However, the Court finds that petitioner may claim refund under Section 108(B)(4) of the NIRC, as amended, which provides:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (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:
>
> xxx xxx xxx
>
> (4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof;

This provision must be read in connection with Section 4.108-5 (b)(4) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, to wit:

> Sec. 4.108-5. *Zero-Rated Sale of Services.*
>
> xxx xxx xxx
>
> (b) Transactions Subject to Zero Percent (0%) Rate - The following services performed in the Philippines by a VAT-registered persons shall be subject to zero percent (0%) VAT rate:
>
> xxx xxx xxx
>
> (4) Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof; Provided, however, that the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code starting Feb. 1, 2006;

It was established in the assailed Decision that petitioner's client, A.P. Moller-Maersk A/S, is a non-resident foreign corporation engaged in international shipping that transports container cargoes, including shipments of cargoes to and from the Philippines. Its "main objects are to carry on shipping, chartering and related business, but it shall be a further object to engage in other transport business, commercial and industrial activities at home and abroad within the scope deemed appropriate by the Board of Directors".

Consequently, petitioner's sale of services to A.P. Moller-Maersk A/S qualify for zero-rating under Section 108(B)(4) of the NIRC of 1997, as amended, and the claimed input taxes attributable thereto may be refunded."

Section 108 (B)(4) of the NIRC of 1997, as amended, only requires that the recipient of the services be engaged in international shipping operations. As such, the requisite that the recipient of the services must not be doing business in the Philippines is irrelevant in this case.

The Court therefore sees no cogent reason to reverse or modify the assailed Amended Decision.

**WHEREFORE**, in view of the foregoing, respondent's Motion for Reconsideration (Amended Decision dated 13 March 2015) is hereby **DENIED** for lack of merit.

**SO ORDERED.**

Juanito C. Castañeda, Jr.
**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

WE CONCUR:

**CAESAR A. CASANOVA**
Associate Justice

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice