REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

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AVALOQ PHILIPPINES OPERATING HEADQUARTERS, Petitioner,	**CTA Case No. 10119**
	Members:
- versus -	**UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAR 13 2023 3:12 p.m.

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RESOLUTION

UY, *J.*:

For resolution is petitioner's *Motion for Reconsideration (Re: 09 January 2023 Decision of the Honorable Court of Tax Appeals – Special Third Division)*[1] filed on February 1, 2023, with respondent's *Comment and Opposition (Re: Petitioner's Motion for Reconsideration dated 01 February 2023)* filed on February 20, 2023.[2]

In the said *Motion*, petitioner prays that: (1) the instant *Motion* be given due course; (2) the *Decision* dated January 9, 2023 be reversed; (3) petitioner's claim for refund in the aggregate amount of ₱3,196,739.74 representing its unutilized input value-added tax (VAT) attributable to its zero-rated sales for the first and second quarters (Q1 to Q2) of calendar year (CY) 2017 or the period January 1, 2017 to June 30, 2017 be granted; and (4) respondent be ordered to refund the said amount in favor of petitioner. The dispositive portion of the assailed *Decision* reads:

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[1] Docket – Vol. 2, pp. 664 to 674.
[2] Docket – Vol. 2, pp. 677 to 681.

***Decision* dated January 9, 2023**:

> "**WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for failure of petitioner to show that its sale of services for Q1 to Q2 of CY 2017 qualify for VAT zero-rating.
>
> **SO ORDERED.**"

Petitioner's arguments:

In its *Motion*, petitioner claims that although its General Framework Services Agreement (GFSA) did not specifically provide a clause indicating that its provision of service to its non-resident foreign affiliates will be undertaken domestically, the totality of evidence proves that the subject services were rendered in the Philippines.

Petitioner emphasizes that it has been sufficiently established that petitioner is a regional operating headquarters (ROHQ) of Avaloq Group AG, as evidenced by its Securities and Exchange Commission (SEC) Certificate of Registration and License, and the testimony of its witness, Mary Lalaine Munar.

As an ROHQ established as a branch of Avaloq Group AG in the Philippines, petitioner explains that it is allowed to derive income in the Philippines by performing qualifying services.

Petitioner, citing *AIG Shared Services Corporation (Philippines) [Formerly: Chartis Technology and Operations Management Corporation (Philippines)] v. Commissioner of Internal Revenue; Commissioner of Internal Revenue v. AIG Shared Services Corporation (Philippines) [Formerly: Chartis Technology and Operations Management Corporation (Philippines)]* (*AIG* case),[3] avers that there is simply no incentive for an ROHQ to declare income if its services were not rendered in the Philippines because the same results in the imposition of income tax at the rate of ten percent (10%). Thus, petitioner, an ROHQ, would not have declared an annual service income of ₱303,289,573.00 for CY 2017 if its services were not rendered in the Philippines, as it would result in the imposition of income tax.

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[3] CTA EB Nos. 2424 and 2433, November 17, 2022.

Likewise, petitioner points out that respondent's admission and failure to dispute petitioner's status as an ROHQ cements the presumption that petitioner, an ROHQ, strictly complied with its SEC Certificate of Registration and License, which includes the rendition of the qualifying services in the Philippines and not elsewhere.

Allegedly, in accordance with Sections 3 (q)[4] and (ff),[5] Rule 131 of the Revised Rules on Evidence, and following the ruling in the *AIG* case, the presumption that an ROHQ followed the ordinary course of business and that the law has been obeyed in rendering services domestically, shall stand if uncontradicted. Here, petitioner claims that there is no showing that respondent has contradicted petitioner's status as an ROHQ or the latter's compliance to its mandate as an ROHQ.

In sum, petitioner claims that from the totality of evidence, and guided by the rule that only preponderance of evidence is needed to grant relief in a civil case, it has sufficiently proven that its services were rendered in the Philippines.

Respondent's counter-arguments

Respondent counter-argues that petitioner failed to prove that it is a VAT-registered entity. Petitioner was not able to submit any proof that it is engaged in zero-rated or effectively zero-rated sales.

Respondent also agrees with the Court that petitioner failed to prove that the place of performance of its services was in the Philippines; thus, petitioner's services rendered to its foreign clients classified as non-resident foreign corporations not engaged in business in the Philippines, cannot qualify as subject to zero percent (0%) VAT under Section 108 (B) (2) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Finally, respondent asserts that claims for refund, which partake of the nature of exemptions, are strictly construed against the claimant. The claimant has the burden of proof to establish the factual basis of his/her/its claim for tax credit or refund.

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[4] SECTION 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: xxx
(q) That the ordinary course of business has been followed.

[5] (ff) That the law has been obeyed.

THE COURT'S RULING

After a careful review of the arguments raised by petitioner, the Court finds no merit in petitioner's *Motion*.

Petitioner primarily anchors its claim that it has sufficiently proven that its services were performed in the Philippines, on the fact that it is an ROHQ of Avaloq Group AG.

There is no question that petitioner is an ROHQ allowed to derive income in the Philippines by performing qualifying services. However, it bears reiterating that cases filed before this Court are litigated *de novo*. As such, party litigants should prove **every minute aspect** of their cases.[6]

Notwithstanding the presumption under Sections 3 (q) and (ff), Rule 131 of the Revised Rules on Evidence, the issue as to whether or not petitioner performed services in the Philippines is a question of fact which must be proven by specific evidence. Petitioner cannot merely rely on the provision that ROHQs are licensed to do business in the Philippines in order to prove a fact in issue. Although it was shown that petitioner is an ROHQ, it is still necessary on its part to prove that its services were performed in the Philippines.

In the instant case, the GFSA entered into by petitioner and its non-resident foreign affiliates has no provision as to where the services are to be performed by petitioner. The fact that the location where the services were to be provided is not specified was corroborated by the Court-commissioned Independent Certified Public Accountant (ICPA), Krista V. Bambao, in her ICPA Report[7] and *Judicial Affidavit*.[8] Thus, We find that petitioner failed to comply with the requirement that the services must be performed in the Philippines by a VAT-registered person in order for the services to be subject to zero percent (0%) VAT under Section 108 (B) (2) of the NIRC of 1997, as amended.

Meanwhile, the Court is not unaware of the *AIG* case where it was held that an ROHQ, which is only taxable on its income from sources within the Philippines, would not have declared income if its

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[6] *Commissioner of Internal Revenue v. United Salvage and Towage (Phils.), Inc.*, G.R. No. 197515, July 2, 2014.
[7] Exhibit "P-27", Docket – Vol. 1, pp. 356 to 357.
[8] Answer to Question 25, Exhibit "P-26", Docket – Vol. 1, pp. 401 to 404.

services were not rendered in the Philippines because doing so will result in the imposition of income tax; there is simply no incentive to do so.

However, it must be emphasized that the doctrine of *stare decisis* applies only to cases decided by the Supreme Court. It becomes operative only when judicial precedents are set by pronouncements of the Supreme Court to the exclusion of lower courts.[9] Notably, the *AIG* case invoked by petitioner is a Decision rendered by the Court *En Banc.*

It must be stressed that judicial decisions which form part of our legal system are only decisions of the Supreme Court.[10] Suffice it to state that decisions of the Court of Tax Appeals are not given the same level of recognition.[11] Hence, the *AIG* case cannot be considered as a binding precedent.

Thus, considering that it was never established that the place of performance of the subject services was in the Philippines, petitioner's sales of services to its non-resident foreign affiliates cannot qualify as subject to zero percent (0%) VAT under Section 108 (B) (2) of the NIRC of 1997, as amended.

Statutes that grant tax exemptions are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Tax refunds in relation to the VAT are in the nature of such exemptions.[12] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[13]

Accordingly, the Court finds no compelling reason to reconsider, modify, or reverse the assailed *Decision.*

WHEREFORE, in light of the foregoing considerations, the

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[9] *United Coconut Planters Bank v. Spouses Walter Uy and Lily Uy*, G.R No. 204039, January 10, 2018.
[10] *Government Service Insurance System v. Leo L. Cadiz*, G.R. No. 154093, July 8, 2003.
[11] *San Roque Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 203249, July 23, 2018.
[12] *Panasonic Communications Imaging Corporation of the Philippines (formerly Matsushita Business Machine Corporation of the Philippines) v. Commissioner of Internal Revenue*, G.R. No. 178090, February 8, 2010.
[13] *Eastern Telecommunications Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

instant *Motion for Reconsideration (Re: 09 January 2023 Decision of the Honorable Court of Tax Appeals – Special Third Division)* is **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice