REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MAXIMA MACHINERIES, INC.,
Petitioner,

CTA EB No. 2282
(CTA Case No. 9598)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

\- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 2 9 2021
10:55 a.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review filed by petitioner Maxima Machineries, Inc. on July 7, 2020 pursuant to Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals, praying for the Court *En Banc* to review the Decision dated January 22, 2020[1] and Resolution dated June 2, 2020[2] promulgated by the Court in Division in CTA Case No. 9598, entitled *Maxima Machineries, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent*, which denied petitioner's claim for refund in the amount of ₱104,580,305.56 allegedly representing its unutilized input value-added tax (VAT) for the period October 1, 2014 to March 31, 2015.

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[1] Penned by Associate Justice Juanito C. Castaneda, Jr., with Associate Justice Cielito N. Mindaro-Grulla and Associate Justice Jean Marie A. Bacorro-Villena, concurring; CTA *En Banc* Docket, pp. 27-74.

[2] Penned by Associate Justice Juanito C. Castaneda, Jr., with Associate Justice Cielito N. Mindaro-Grulla and Associate Justice Jean Marie A. Bacorro-Villena, concurring; CTA *En Banc* Docket, pp. 75-79.

The dispositive portions of the assailed Decision and assailed Resolution state:

<u>Decision dated January 22, 2020</u>

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

<u>Resolution dated June 2, 2020</u>

> "**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration and/or New Trial is **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE PARTIES

Petitioner Maxima Machineries, Inc. is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at 871 Quezon Avenue, Quezon City.[3] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number (TIN) 006-618-023-00000.[4]

Respondent Commissioner of Internal Revenue (CIR), on the other hand, is empowered to perform the duties of his office, including acting upon protest cases and approval of claims for refund or tax credit as provided by laws and implementing regulations. He can be served with pleadings, notices, and other processes at BIR National Office Bldg., BIR Road, Diliman, Quezon City.[5]

THE FACTS

For the third (3rd) and fourth (4th) quarters of Fiscal Year (FY) ending March 31, 2015, petitioner filed with the BIR its Original

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[3] Exhibits "P-1" and "P-2", CTA Division Docket, Vol. V, pp. 2012-2026.
[4] Exhibit "P-3", CTA Division Docket, Vol. V, pp. 2027-2029.
[5] Par. A.1, Joint Stipulation of Facts and Issues (JSFI), CTA Division Docket, Vol. V, p. 1869.

Quarterly VAT Returns (BIR Form No. 2550-Q) on January 23, 2015[6] and April 21, 2015,[7] respectively; and its Amended Quarterly VAT Returns for the 3rd and 4th quarters of FY ending March 31, 2015 on June 19, 2015[8] and July 6, 2015,[9] respectively.

On December 28, 2016, petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914) of its unutilized input VAT, covering the 3rd and 4th quarters of FY 2015, amounting to ₱36,551,575.64 and ₱68,028,729.92, respectively.[10]

The said administrative claim for refund was denied by OIC-Assistant Commissioner Teresita M. Angeles, in her letter dated April 24, 2017, which was received by petitioner on April 25, 2017.[11]

Unsatisfied, petitioner filed a Petition for Review with the Court in Division on May 24, 2017.[12]

After trial, the Court in Division promulgated on January 22, 2020 the assailed Decision denying petitioner's refund claim.[13]

On February 10, 2020 petitioner filed a Motion for Reconsideration and/or New Trial seeking reconsideration of the assailed Decision,[14] which was, however, denied by the Court in Division in the assailed Resolution dated June 2, 2020.[15]

Dissatisfied, petitioner filed the present Petition for Review before the Court *En Banc* on July 7, 2020, docketed as CTA EB No. 2282.[16]

Respondent filed his Comment (Re: Petition for Review) on August 27, 2020.[17] In the Resolution dated September 16, 2020, the

[6] Exhibit "P-76", CTA Division Docket, Vol. V, pp. 2154-2155.
[7] Exhibit "P-77", CTA Division Docket, Vol. V, pp. 2156-2157.
[8] Exhibit "P-78", CTA Division Docket, Vol. V, pp. 2158-2159.
[9] Exhibit "P-79", CTA Division Docket, Vol. V, pp. 2160-2161.
[10] Exhibit "P-93", CTA Division Docket, Vol. V, pp. 2177-2215.
[11] Exhibit "P-94", CTA Division Docket, Vol. V, pp. 2216-2218.
[12] CTA Division Docket, Vol. I, pp. 10-52.
[13] CTA Division Docket, Vol. VI, pp. 2376-2423.
[14] CTA Division Docket, Vol. VI, pp. 2424-2434.
[15] CTA Division Docket, Vol. VI, pp. 2452-2456.
[16] CTA *En Banc* Docket, pp. 1-22.
[17] CTA *En Banc* Docket, pp. 315-319.

Court *En Banc* noted respondent's comment and submitted the present Petition for Review for decision.[18]

THE ISSUE

> Whether or not the Court in Division erred in finding that petitioner has no excess input VAT available for refund?

PARTIES' ARGUMENTS

Petitioner's Arguments

Petitioner argues that the Court in Division erred in ruling that: (i) petitioner has no excess input VAT available for refund; (ii) the total amount of ₱51,597,762.80 should qualify for VAT zero-rating considering that petitioner's export sale of services were properly supported by zero-rated VAT official receipts (ORs) issued to Marubeni Corporation and Bomag Fayat Group and that the services rendered were services other than processing, manufacturing or repacking of goods; (iii) Marubeni Corporation – Japan, under the laws of Japan, is actually Marubeni Corporation; (iv) the business address in the official receipts, "*7-1 Nihonbashi 2-Chome, Chuo-ku Tokyo, 103-6060, Japan*" is the very same address of Marubeni Corporation, which is proof that Marubeni Corporation – Japan and Marubeni Corporation are one and the same entity; (v) petitioner rendered services to both Marubeni Corporation and Bomag Fayat Group by acting as their agent in the Philippines for the placing of the orders of the local customer to its non-foreign resident corporation suppliers, which services do not involve any processing, manufacturing or repacking of goods; (vi) petitioner's importations under Exhibits "P-156", "P-158", "P-160" and "P-162" were duly substantiated and should have qualified for VAT zero-rating; and, (vii) even though the Import Entry and Internal Revenue Declarations (IEIRDs) were without machine validation, they were duly supported by the Bureau of Customs (BOC)'s Electronic to Mobile (E2M) schedule, thus, the corresponding input VAT on importation should not have been disallowed.

Respondent's Arguments

In his Comment, respondent argues that petitioner's contention, that the Court in Division erred in ruling that it has no excess input VAT

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[18] CTA *En Banc* Docket, p. 322.

available for refund, is utterly bereft of merit. Thus, he prays that the Petition for Review be denied for lack of merit and that the assailed Decision and assailed Resolution be affirmed.

THE COURT *EN BANC'S* RULING

The Petition for Review is bereft of merit.

Petition for Review with the Court En Banc was timely filed

The Revised Rules of the Court of Tax Appeals (RRCTA) provides:

> "Rule 8
> Procedure in Civil Cases
>
> xxx xxx xxx
>
> SEC. 3. Who may appeal; period to file petition. -
>
> xxx xxx xxx
>
> (b) A party adversely affected by a decision or resolution of a Division of the Court on 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**. xxx" (*Boldfacing supplied*)

Petitioner received the assailed Resolution of the Court in Division on June 22, 2020.[19] Thus, he had fifteen (15) days from June 22, 2020 or until July 7, 2020 within which to file its Petition for Review before the Court *En Banc*.

Considering that the present petition was timely filed on July 7, 2020, the Court *En Banc* is vested with jurisdiction to take cognizance of the same.

The Court in Division correctly found that petitioner is not entitled to its claim for refund

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[19] Notice of Resolution dated June 2, 2020, CTA Division Docket Vol. VI, p. 2451.

Petitioner disagrees with the Court in Division's ruling that the indent commissions from its sale of services to non-resident foreign corporations (NRFCs) - Marubeni Corporation – Japan, and Bomag Fayat Group, failed to qualify for VAT zero-rating under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Pursuant to an "indent arrangement", the two (2) NRFCs had designated petitioner to be their agent in the Philippines to deal with their local customers, by making arrangements for the placing of orders of the local customers to these NRFCs. For acting as an agent, petitioner earned indent commissions on all orders placed with the NRFCs.[20]

Section 108(B)(2) of the NIRC of 1997, as amended, provides:

> "SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –
>
> (A) 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:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> **(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)**;" *(Boldfacing supplied)*

Based on the foregoing, certain essential elements must be present for a sale or supply of services to be subject to the VAT rate of

[20] Par. 18, Petition for Review, CTA Division Docket Vol. VI, p. 18.

zero percent (0%) under Section 108(B)(2) of the NIRC of 1997, as amended, to wit:

1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[21]

2. The payment for such services were made in acceptable foreign currency accounted for in accordance with the BSP rules;[22]

3. The services rendered should be other than "processing, manufacturing or repacking goods";[23] and,

4. The services must be performed in the Philippines by a VAT-registered person.

To be considered as an NRFC doing business outside the Philippines, each entity must be supported at the very least by both: (1) SEC Certification of Non-Registration of Corporation/Partnership; **AND** (2) Proof of Certificate/Articles of Foreign Incorporation/Association or printed screenshots of the US Securities and Exchange Commission (SEC) Website showing the state/province/country where the entity was organized.[24]

To prove that its sale of services to **Marubeni Corporation – Japan** qualify for VAT zero-rating, petitioner submitted a Securities and Exchange Commission (SEC) Certification of Non-Registration of Company[25] attesting that Marubeni Corporation – Japan is not registered as a corporation or partnership in the records of the SEC, and the duly-authenticated Articles of Incorporation of **Marubeni Corporation**.[26] Interestingly, the supporting documents such as official receipts,[27] bank certificates of inward remittance,[28] and the duly-

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[21] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) vs. Commissioner of Internal Revenue,* G.R. No. 201326, February 8, 2017.
[22] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 153205, January 22, 2007; *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch),* G.R. No. 152609, June 29, 2005.
[23] *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* supra.
[24] *Commissioner of Internal Revenue vs. CITCO International Support Services Limited-Philippine ROHQ,* CTA EB No. 2015, November 29, 2019.
[25] Exhibit "P-50", CTA Division Docket Vol. V, p. 2105.
[26] Exhibit "P-51", CTA Division Docket Vol. V, pp. 2106-2121.
[27] Exhibits "P-184-a" to "P-184-d".
[28] Exhibits "P-191-a" to "P-191-b".

authenticated Articles of Incorporation, reveal that petitioner had actually transacted with "Marubeni Corporation" and **not** "Marubeni Corporation – Japan". Thus, the Court in Division found that petitioner failed to prove that it rendered services to Marubeni Corporation – Japan which would qualify for VAT zero-rating.

Assuming that Marubeni Corporation – Japan and Marubeni Corporation are one and the same entity, as insisted by petitioner, the sale of services to Marubeni Corporation or Marubeni Corporation – Japan would still not qualify for zero-rating.

The SEC Certification of Non-Registration of Company submitted in evidence by petitioner explicitly states that there exists a company name "Marubeni Corporation" registered with the SEC.[29] Thus, it cannot be said that Marubeni Corporation is an NRFC. Accordingly, petitioner's sales to Marubeni Corporation may not be considered as zero-rated sales.

With respect to Bomag Fayat Group, petitioner presented an SEC Certification of Non-Registration of Company[30] and the duly-authenticated Articles of Incorporation of Bomag Fayat Group.[31] It, however, failed to offer any evidence to prove the kind of services it rendered to Bomag Fayat Group that would qualify as zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended. Other than the allegation that it rendered services for which it received indent commissions, no proof of any contract or service agreement was adduced by petitioner. Hence, the Court *En Banc* is unable to verify whether any service other than "processing, manufacturing or repacking of goods" was rendered by petitioner in the Philippines in favor of Bomag Fayat Group. Thus, petitioner's sales to the Bomag Fayat Group shall not also be considered as zero-rated sales.

Anent the importations covered by Exhibits "P-156", "P-158", "P-160" and "P-162", petitioner posits that the same were duly substantiated.

An examination of the assailed Decision shows that the Court in Division found that the input VAT on the importations under Exhibits "P-156", "P-158", "P-160" and "P-162" were supported by IEIRDs and traced to E2M schedule. The Court in Division, however, disallowed

[29] Exhibit "P-50", CTA Division Docket Vol. V, p. 2105.
[30] Exhibit "P-52", CTA Division Docket Vol. V, p. 2122.
[31] Exhibit "P-53", CTA Division Docket Vol. V, pp. 2123-2131.

the same for failure to meet the substantiation requirements as the IEIRDs presented were without machine validation.

Contrary to the Court in Division's ruling, the machine validation of IEIRDs as proof of payment of duties and taxes on importation is no longer required.

The previous requirement of presenting the IEIRDs to an Authorized Agent Bank (AAB) for final payment and machine validation has been discontinued with the issuance of Customs Administrative Order (CAO) No. 10-2008 dated November 12, 2008, the relevant portion of which reads:

> "4.2.3. Discontinuing the Direct Payment to the AAB. Consistent with the national roll-out schedule of the e2m Customs, **the procedure of presenting the printed IEIRD or SAD to an AAB for final payment and machine validation of the amount collected shall be discontinued.** In lieu thereof, the final payment will be debited by the concerned AAB from the designated debit account upon receipt of the final payment instructions from Customs via the payment gateway, subject to the bank's confirmation and security procedures for payment instructions." *(Boldfacing supplied)*

In fact, CAO No. 10-2008 expressly repealed CAO No. 2-95 which required the machine validation of IEIRDs, to wit:

> "**6.0 Repealing Clause**
>
> Customs Administrative Order 2-95 dated September 8, 1995 and all other orders, memoranda, circulars and issuance inconsistent herewith are hereby repealed and/or deemed modified accordingly."

Under CAO No. 10-2008, the relevant responsibilities of the BOC and AAB have been limited to the following:

> "**5.0 Responsibilities**
>
> xxx xxx xxx
>
> **5.3 BOC**
>
> 5.3.1 Send payment instructions to the Payment Gateway.

5.3.2 Receive confirmation of debit from the Payment Gateway.

5.3.3 **Issue statement of settlement of duties and taxes for completely processed declaration to importers.**

5.3.4 Issue CA and CCN to importers.

5.3.5 Receive the AAB Reference number and upload this to the client registration database.

5.3.6 Send electronic notice of abandonment to concerned banks in line with paragraph 4.2.5 of this Order.

5.3.7 Send electronic IED to the payment gateway.

xxx xxx xxx

5.5 AAB

5.5.1 Receive payment instructions from the payment gateway.

5.5.2 Debit the importer's nominated account/s subject to the banks internal checking system.

5.5.3 Credit the account of the BOC maintained with the collecting bank and remit to the BSP for the account of BOC following the guidelines of the existing BAP-BOC MOA.

5.5.4 **Send payment confirmation to the payment gateway.**

5.5.5 Refuse payments for abandoned shipments in line with paragraph 4.2.5 and 5.3.6. The Commissioner of Customs shall issue a separate Order for handling shipments deemed abandoned under this Administrative Order.

5.5.6 For L/Cs canceled, send notice of cancellation to BOC through the payment gateway." *(Boldfacing supplied)*

Based on the foregoing, the presentation of machine-validated IEIRDs is no longer required to prove payment of taxes and duties on importations under the E2M Customs system. The presentation and offer in evidence of the IEIRDs/SADs and their corresponding

Statement of Settlement of Duties and Taxes (SSDTs) issued under the E2M Customs system shall be sufficient to prove the fact of importation and the payment of the required duties and taxes thereon.

In this case, petitioner submitted SSDTs along with the corresponding IEIRDs to prove its input taxes on importations. With respect however to those importations under Exhibits P-156", "P-158", "P-160" and "P-162", the input taxes from these importations were only supported by IEIRDs. While the Court in Division was able to trace the same from the E2M schedule, petitioner failed to present the SSDTs to prove the payment of the VAT on said importations.

The E2M Schedule shows the list of importations made by petitioner in 2015 with the Broker, Supplier, Port, RegDate, AsmtDate, Entry Nos., HS Code, Description, Bill Lading, Value, Duties and Taxes, Wharfage, Arrastre, Duty Rate, Custom Duties and VAT due for each importation.[32] Sorely, there is nothing therein that indicates that the duties and taxes on these importations were indeed paid by petitioner.

Actions for tax refund or credit, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is *strictissimi* scrutinized and must be duly proven. The burden is on the taxpayer to show that it has strictly complied with the conditions for the grant of the tax refund or credit. Since taxes are the lifeblood of the government, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[33]

In sum, there being no reversible errors committed by the Court in Division, the Court *En Banc* finds no cogent reason to reverse and set aside the assailed Decision dated January 22, 2020 and assailed Resolution dated June 2, 2020.

WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit. Accordingly, the Court in Division's Decision dated January 22, 2020 and Resolution dated June 2, 2020 are **AFFIRMED**.

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[32] Exhibit "P-197".
[33] *Coca-cola Bottlers Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 222428, February 19, 2018.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

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

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