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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

CITCO INTERNATIONAL SUPPORT SERVICES LIMITED-PHILIPPINE ROHQ,
Respondent.

CTA EB No. 2015
(CTA CASE No. 9102)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JUN 05 2020
4:05 p.m.

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RESOLUTION

MINDARO-GRULLA, J.:

Submitted for resolution on February 5, 2020 of this Court *En Banc* is petitioner Commissioner of Internal Revenue's (CIR) Motion for Reconsideration (Decision of 29 November 2019), filed on December 19, 2019, seeking the reversal of the Decision dated November 29, 2019, the dispositive portion of which reads as follows:

Decision dated November 29, 2019: [1]

"**WHEREFORE**, premises considered, the Petition for Review filed by the CIR is hereby **DENIED**. The Decision dated 02 July 2018 and the Resolution dated 04 February 2019 rendered by the Third Division of this Court are hereby **AFFIRMED**. No pronouncement as to costs.

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[1] En Banc Docket, pp. 60-72.

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SO ORDERED."

In the instant Motion, petitioner CIR insists that respondent is not entitled to the claim of input VAT refund for CY 2013. The CIR argues that it is not enough to establish *prima facie* that recipients of respondent's services are doing business outside the Philippines in order to qualify such services to zero-rating.

The Court is not persuaded and finds no merit in the Motion for Reconsideration.

A perusal of the Motion for Reconsideration shows that the grounds raised therein are mere reiterations of petitioner's arguments, which have already been comprehensively discussed and passed upon by this Court in the assailed Decision. Nonetheless, we reiterate for emphasis.

Section 108(B)(2) of the 1997 National Internal Revenue Code (NIRC), as amended, provides that in order for a sale of service transaction to be subject to the 0% VAT rate, it is required, *inter alia,* that the services were **"rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed" and the consideration therefore was "paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP)"**

As discussed in the assailed Decision, to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by **BOTH** Securities and Exchange Commission (SEC) Certificate of Non-Registration of Corporation/ Partnership **AND** proof of Certificate/ Articles of Foreign Incorporation/ Association or printed screenshots of the US SEC Website showing the state/province/country where the entity was organized.

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Considering that respondent has sufficiently complied with the afore-mentioned requisites, the Court has no reason to deny the claim for refund.

The CIR's reliance on *Accenture Inc. vs. Commissioner of Internal Revenue*[2] is misplaced, what the law and jurisprudence merely require, among others, is that the recipient of the zero-rated service must be conducting business outside the Philippines. In fact, in the case of *CIR vs. American Express International Inc.*,[3] the Supreme Court held that there is no qualification that such act of doing business must be done **solely** outside the Philippines.

Based on the foregoing, the law clearly neither makes a qualification nor adds a condition in determining the tax situs of a zero-rated service.

Otherwise stated, it is not the continuity of commercial dealings or whether the foreign entity/ service recipient is a non-resident foreign corporation, as defined under the provisions of the NIRC, that determines whether the services rendered by the Philippine taxpayer in favor of such foreign entity qualifies as a zero-rated transaction, but whether such service is rendered in favor of a foreign entity conducting business outside the Philippines.

Even for the sake of argument that it was an additional requirement for claiming a VAT refund, each Philippine taxpayer seeking to claim a VAT refund for zero-rated sales would be required to verify that each foreign entity it renders services in favor of does not conduct business in the Philippines. How then will that be done? It necessarily requires a tedious process wherein the Bureau of Internal Revenue (BIR) should also verify whether a foreign entity/ service recipient also receives services from other Philippine entities. An absurd situation will arise when all the law requires is that the service be rendered in favor of an entity engaged in business outside the Philippines.

Notably, it bears emphasis that it is not unusual for a Philippine entity to render services in favor of its foreign affiliate and vice versa. This "exchange of services" does not take away from the Philippine entity its entitlement to zero-

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[2] Accenture Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2012.
[3] CIR vs. American Express International Inc., G.R. No. 152609, June 29, 2005.

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rating precisely because the law merely requires that the Philippine entity's services be rendered in favor of an entity conducting business outside the Philippines.

Again, as consistently held by the Court, this requirement is complied with when service provider presents, at least, BOTH a consularized incorporation document and a SEC negative certification for each foreign entity/ service recipient.

In light of the factual circumstances, respondent having complied with the requirements for refund provided for under NIRC of 1997, as amended, the grant of refund is proper.

Under the premises, the Court finds no compelling reason to reverse or set aside the assailed Decision.

WHEREFORE, premises considered, petitioner's "Motion for Reconsideration (Decision of 29 November 2019) is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen S. L
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