REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ACCCENTURE, INC, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

C.T.A. CASE NO. 7158

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ACCCENTURE, INC, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

C.T.A. CASE NO. 7285

x--x

ACCCENTURE, INC, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

C.T.A. CASE NO. 7313

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

AUG 0 7 2008
4:00 p.m.

x- -x

DECISION

CASTAÑEDA, JR., *J.*:

This case is a consolidation of the three (3) separate Petitions for Review filed by petitioner seeking the approval of its claims for the issuance of a tax credit certificate or refund of unutilized input value-added tax (VAT) for

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the period commencing from December 1, 2002 to August 31, 2003, which are attributable to its zero-rated sale of services to its foreign clients in the aggregate amount of P73,438,995.77, broken down as follows:

CTA Case No.	Period Covered		Amount
7158	2nd qtr 2003	Dec 1, 2002 to Feb 28, 2003	P 19,856,700.02
7285	3rd qtr 2003	Mar 1, 2003 to May 31, 2003	23,109,346.75
7313	4th qtr 2003	June 1, 2003 to Aug 31, 2003	30,472,949.00
Total			**P 73,438,995.77**

Accenture, Inc. (Petitioner) is a domestic corporation duly registered with the Securities and Exchange Commission, and existing under and by virtue of the Philippine laws. Its principal office address is at MSE Building, Ayala Avenue, Makati City.[1] Petitioner is a VAT taxpayer duly registered with the Bureau of Internal Revenue (BIR), in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, with VAT Registration Certificate No. 000-845-543-000.[2]

As stated in its Articles of Incorporation, petitioner is primarily engaged in the business of providing management consulting and management information consulting services, including, but not limited to, business integration, strategic services, change management services, systems integration, systems management, development, sale and/or licensing of software, and sale of hardware and related products, either as principal or agent.[3]

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[1] Paragraph 1, Joint Stipulation of Facts and Issues (JSFI), Docket, page 213; Exhibit "A", Docket, pages 301 to 309.
[2] Paragraph 3, JSFI, Docket, page 214; Exhibit "A", Docket, page 301.
[3] Paragraph 4, JSFI, Docket, page 214.

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The Commissioner of Internal Revenue (Respondent) is the duly appointed officer of the Bureau of Internal Revenue (BIR) with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes. Her office address is at the BIR National Office Building, Agham Road, Diliman, Quezon City.[4]

For the period of December 1, 2002 to August 31, 2003, petitioner filed the following Monthly and Quarterly VAT Returns on these dates:

Exhibits	Month	Date Filed
B	December 2002	January 9, 2003
C	January 2003	February 19, 2003
D	2nd Quarter	March 17, 2003
E		June 17, 2004 (amended)
F	March 2003	April 10, 2003
G	April 2003	May 20, 2003
H	3rd Quarter	June 17, 2003
I		June 17, 2004 (amended)
Q	June 2003	July 10, 2003
R	July 2003	August 13, 2003
S	4th Quarter	September 24, 2003
J		June 17, 2004 (amended)

On January 13, 2005, petitioner filed with the BIR an administrative claim for refund and/or issuance of tax credit certificate of its unutilized input VAT credits for the following taxable periods:[5]

Period	Unutilized Input VAT
December 1, 2002 to February 28, 2003	19,856,700.02
March 1, 2003 to May 31, 2003	23,109,346.75
June 1, 2003 to August 31, 2003	30,472,949.00
TOTAL	**73,438,995.77**

Since respondent had not acted on petitioner's claim, petitioner instituted the following Petitions for Review with this Court on these dates: Jr

[4] Paragraph 2, JSFI, Docket, pages 213 to 214.
[5] Paragraph 7, JSFI, Docket, pages 214 to 215.

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Case Number	Period	Date of Filing
7158	December 1, 2002 to February 28, 2003	February 28, 2005
7285	March 1, 2003 to May 31, 2003	July 7, 2005
7313	June 1, 2003 to August 31, 2003	August 24, 2005

On September 5, 2005, petitioner filed a *Motion to Consolidate* CTA Case No. 7158 with CTA Case No. 7285.[6] The Court granted petitioner's motion in a Resolution dated September 26, 2005.[7]

On January 24, 2006, petitioner filed a *Motion to Consolidate* CTA Case Nos. 7158 and 7285 with CTA Case No. 7313.[8] In the proceedings in CTA Case Nos. 7158 and 7285, the Court granted petitioner's motion in open court on January 25, 2006.

On January 30, 2006, petitioner filed their consolidated *Joint Stipulation of Facts and Issues.*[9]

During trial, petitioner presented its documentary and testimonial evidence in support of its stand. Respondent, however, manifested in open court on May 23, 2007 that she will not be presenting evidence and submitted the case for decision.[10] The Court ordered both parties to submit their respective Memorandum. After petitioner and respondent submitted their memoranda on February 22 and 26, 2008, respectively, the case was submitted for decision on February 29, 2008.

The issues, as jointly stipulated by the parties, are the following:

"1. Whether or not Petitioner's sales of goods and services are zero-rated for VAT purposes under Section 108(B)(2)(3) of the 1997 Tax Code.

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[6] Docket, pages 124 to 126.
[7] Docket, page 138.
[8] Docket (CTA Case No. 7313), pages 93 to 96.
[9] Docket, pages 213 to 216.
[10] Docket, page 400.

2. Whether or not petitioner's claim for refund/tax credit in the aggregate amount of P73,438,995.77 arose from Petitioner's domestic purchase of goods which are attributable to its zero-rated sales during the period covering 1 December 2002 to 31 August 2003.

3. Whether or not Petitioner has carried over to the succeeding taxable quarters the alleged unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 December 2002 until 31 August 2003, and applied the same fully to its output VAT liability for the said period.

4. Whether or not Petitioner is paid for in acceptable foreign currency where proceeds are inwardly remitted to the Philippines and accounted for in accordance with the rules and regulations of the BSP.

5. Whether or not Petitioner is entitled to the refund of the amount of P73,438,995.77, representing the unutilized input VAT on domestic purchases of goods and services for the period commencing from 1 December 2002 to 31 August 2003, from its sales of services to various foreign clients."

The above issues may be simplified into: "Whether or not petitioner is entitled to the refund and/or issuance of tax credit certificate in the amount of P73,438,995.77, representing alleged unutilized input VAT paid on domestic purchases of goods and services for the period commencing from December 1, 2002 to August 31, 2003."

The NIRC provision pertinent to claim for issuance of tax credit certificate or refund of unutilized input VAT attributable to zero-rated or effectively zero-rated sales is Section 112(A) of the NIRC of 1997, which provides:

"**Section 112.** *Refunds or Tax Credits of Input Tax—*

(A) *Zero-rated or Effectively Zero-rated Sales.* – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input Jc

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> tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sales and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

Based on the foregoing provision, the following requisites must be satisfied to be entitled to refund or issuance of tax credit certificate of unutilized input VAT:

1. the claim for refund was filed within the two-year prescriptive period;
2. there must be zero-rated or effectively zero-rated sales;
3. input taxes were incurred or paid;
4. such input taxes are directly attributable to zero-rated sales or effectively zero-rated sales; and
5. the input taxes were not applied against any output VAT liability during and in the succeeding quarters.

The period within which to file the claim for refund or tax credits is provided in Section 229 of the NIRC of 1997, which states:

> "**Section 229.** *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the

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> tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

The two-year prescriptive period for the filing of a VAT refund claim should not be counted from the close of the quarter but from the date of filing of the VAT Return to harmonize the provisions of Section 112(A) [then Section 106] of the NIRC of 1997 with Sections 114(C) and 229 [then Sections 110(a) and 230] of the same Code. This is because the VAT liability or refundability can only be determined upon the filing of the Quarterly VAT Return. This was affirmed by the Supreme Court in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*[11], where it ruled that:

> "It is true that unlike corporate income tax, which is reported and paid on installment every quarter, but is eventually subjected to a final adjustment at the end of the taxable year, VAT is computed and paid on a purely quarterly basis without need for a final adjustment at the end of the taxable year. However, it is also equally true that until and unless the VAT-registered taxpayer prepares and submits to the BIR its quarterly VAT return, there is no way of knowing with certainty just how much input VAT the taxpayer may apply against its output VAT; how much output VAT it is due to pay for the quarter or how much excess input VAT it may carry-over to the following quarter; or how much of its input VAT it may claim as refund/credit. xxx.
>
> xxx, it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter."

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[11] G.R. Nos. 141104 and 148763, June 8, 2007, 524 SCRA 73.

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In the present case, not all the periods claimed by petitioner for tax refund or issuance of tax credit certificate fall within the two-year prescriptive period for the filing of the suit in court. A perusal of the records shows the following dates pertinent to the case:

CTA Case No.	Period Covered		Date of Filing (Original Return)	Date of Filing (Administrative Claim)	Date of Filing (Judicial Claim)
7158	2nd qtr 2003	Dec 1, 2002 to Feb 28, 2003	March 17, 2003 (*Exhibit "D"*)	January 13, 2005 (*Exhibit "A"*)	February 28, 2005 (*Petition for Review*)
7285	3rd qtr 2003	Mar 1, 2003 to May 31, 2003	June 17, 2003 (*Exhibit "H"*)	January 13, 2005 (*Exhibit "A"*)	July 7, 2005 (*Petition for Review*)
7313	4th qtr 2003	June 1, 2003 to Aug 31, 2003	September 24, 2003 (*Exhibit "S"*)	January 13, 2005 (*Exhibit "A"*)	August 24, 2005 (*Petition for Review*)

The above table clearly indicates that petitioner's administrative and judicial claims for refund of input VAT on its zero-rated sales for the 2nd and 4th quarters of 2003 were filed within the two-year prescriptive period. However, the same cannot be said of the 3rd quarter of 2003. While the administrative claim for the 3rd quarter of 2003 was filed within the two-year prescriptive period, the corresponding Petition for Review was filed with this Court beyond the prescriptive period, or on July 7, 2005. Thus, the Court shall only resolve petitioner's claim of input VAT refund or tax credit attributable to its zero-rated sales for the 2nd and 4th quarters of 2003. The claim for the 3rd quarter of 2003 in the amount of P23,109,346.75 is denied due to prescription.

As to whether petitioner's sales qualify for zero percent (0%) VAT pursuant to Section 108(B)(2) of the NIRC of 1997, petitioner asserts that its sales qualify for zero-rating. The bulk of its sales purportedly pertains to petitioner's services to various foreign clients in providing management consulting and management information consulting services, including but not

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limited to, business strategic services, change management services, systems integration, systems management, development, sale/or licensing of software, and sale of hardware and related products, either as principal or agent, and other related business activities; and the consideration for which was paid for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas (BSP).*

Value-added tax at zero percent (0%) is imposed on revenues derived from sale of services aside from processing, manufacturing or repacking of goods for other persons doing business outside the Philippines which goods are subsequently exported, provided that the transaction is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* under Section 108(B)(2) of the NIRC of 1997, which states:

> "**Section 108.** *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
>
> xxx xxx xxx
>
> (B) *Transaction 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);
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> (2) **Services other than those mentioned in the preceding paragraph, 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).**" (*Emphasis supplied*) ge

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Thus, for services to qualify for zero-rating under Section 108 (B)(2), the taxpayer must comply with the following requirements: (1) the recipient of its business is doing business outside the Philippines, (2) the payment of its service fees was in acceptable foreign currency, and (3) accounting of such remittance was in accordance with BSP rules.

In order to prove its alleged zero-rated or effectively zero-rated sales, petitioner presented in its formal offer of exhibits, the *Intercompany Payment Request*[12], *Official Receipts*[13], *Billing Statements*[14], *Memo Invoices-Receivable*[15], *Memo Invoices-Payable*[16], *Bank Statements*[17], and *Affidavit of its Country Controller, Ms. Loida S. Samson*[18].

In addition, petitioner submitted the *Report*[19] of Mr. Emmanuel Mendoza, the Court-commissioned Independent Certified Public Accountant (ICPA) where he ascertained that petitioner's gross billing as reflected in the Intercompany Payment Requests (IPR) for the 2nd to 4th quarters of 2003 (December 2002 to August 2003) pertaining to alleged zero-rated sales were all supported by zero-rated official receipts and billing statements, and/or memo invoices issued by the Company and that the foreign exchange proceeds thereof (net of petitioner's payable to Accenture Participations B.V.) were duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas.* However, based on the said *Report*, the Court notes that the alleged zero-rated sales per IPR amounting to

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[12] Exhibits "SS-1" to "SS-9".
[13] Exhibits " TT-1" to " TT-9".
[14] Exhibits " UU-1" to "UU-9".
[15] Exhibits "VV-1" to "VV-74".
[16] Exhibits "WW-1" to "WW-75".
[17] Exhibits "XX-1" to "XX-9".
[18] Exhibit "Y", Docket, pages 349 to 359.
[19] Exhibit "PP", pages 12 to 14.

P2,721,540,894.68 are higher than the alleged zero-rated sales per petitioner's Quarterly VAT Returns by P343,507,014.70.

Meanwhile, petitioner did not file an Amended VAT Return to reflect the higher zero-rated sales amount of P2,721,540,894.68. Inevitably, the Court is inclined to consider only the amount of P1,612,678,624.15 reflected in its VAT Returns for the subject period of claim, broken down as follows:

Exhibit No.	Period Covered		Zero-Rated Sales Per VAT Returns
E / AA	2nd qtr 2003	Dec 1, 2002 to Feb 28, 2003	P 672,934,982.87
J / CC	4th qtr 2003	June 1, 2003 to Aug 31, 2003	939,743,641.28
Total			**P 1,612,678,624.15**

Nevertheless, after a thorough review and evaluation of the documentary evidence presented, the Court notes that no evidence was presented to prove the fact that the foreign clients to whom petitioner renders service are clients doing business outside the Philippines.

In the recent case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* [20], the Supreme Court held that another essential condition for qualification to zero-rating under Section 108 (B) (2) [then Section 102 (b) (2)] is that the recipient of such services is doing business outside the Philippines. We quote hereunder the pertinent portion of the said decision:

> "The Tax Code not only requires that the services be other than "processing, manufacturing or repacking of goods" and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is that the **recipient of such services is doing business *outside* the Philippines.** While this requirement is not expressly stated in the second paragraph of Section 102(b), this is clearly provided in the first paragraph of Section 102(b)

[20] G.R. No. 153205, January 22, 2007, 512 SCRA 124.

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> where the listed services must be **"for other persons doing business outside the Philippines."** The phrase "for other persons doing business outside the Philippines" not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term "services" appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.
>
> 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."

In this case, the documents submitted by the petitioner merely establish the existence of sale, that the payments of its service fees were in acceptable foreign currency, that the proceeds of such sales transactions were inwardly remitted to the Philippines and accounted for in accordance with BSP rules.

Even in the testimonial evidence presented by the petitioner, there is nothing that will show that the "foreign clients" are doing business outside the Philippines and we quote hereunder the pertinent portions of the testimony given by Ms. Loida S. Samson:

> Q: Why do you say that your company's sales is zero-rated for VAT purposes?

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A: Our company's sales pertain to its services to various clients in providing consulting and management information consulting services which are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

xxx xxx xxx

Q: Who are the clients of Accenture?

A: Accenture serves foreign clients in providing consulting and management information consulting services.

Likewise, in the affidavit executed by Mr. Emmanuel Mendoza, there is no testimony to the effect that the petitioner's foreign clients are doing business outside the Philippines. The petitioner's allegation that its clients are "foreign clients" is not sufficient to meet the requirement of law which mandates that the recipient of its service is doing business outside the Philippines.

The phrase "foreign clients" is couched in its generality that the Court cannot just simply assume that they are engaged in doing business outside the Philippines. A "foreign client" may also be engaged in doing business in the Philippines and in that case, when petitioner and recipient of its services are both doing business in the Philippines, their transaction falls squarely under Section 108 (A) of NIRC of 1997 governing domestic sale or exchange of services subject to 12% VAT. Even if there is an allegation that these foreign clients are doing business outside the Philippines, still the Court cannot give weight to such allegation. Mere allegations are not sufficient but must be accompanied by supporting evidence. [21]

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[21] *Francisco S. Tatad vs. Secretary of the Department of Energy, et. al.*, G.R. Nos. 124360 and 127867, November 5, 1997, 281 SCRA 330.

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Thus, the petitioner fails to prove that its sale of services to "foreign clients" qualifies for zero percent VAT. Well settled is the rule that a claim for refund is construed strictissimi juris against the taxpayer as it partakes the nature of exemption from taxation.[22] Besides we believe that in claims for refund, the law mandates the court to observe a higher standard of caution in appreciating and evaluating evidence. If indeed a claim for refund is wanting in pertinent and supporting evidence, then the granting thereof could prove to be improper, if not difficult.[23] Therefore, petitioner in claiming for tax refund has the burden of proof to establish the factual basis of its claim.

By reason of the foregoing conclusion, the Court deems it unnecessary to pass upon the other issues raised in the case.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED.**

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

[22] *Citibank N.A. vs. Court of Appeals, et. al.*, G.R. No. 107434, October 10, 1997, 280 SCRA 459.
[23] *ECW Joint Venture Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6398, May 26, 2003.

ATTESTATION

I attest 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's Division.

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice

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