REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SITEL PHILIPPINES CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10076

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, and
REYES-FAJARDO, *JJ.*

Promulgated:
AUG 15 2022 8:50a

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RESOLUTION

MANAHAN, *J.:*

For this Court's resolution is petitioner Sitel Philippines Corporation's *Motion for Reconsideration (of the Decision dated February 21, 2022)* filed on March 17, 2022, without respondent's comment/opposition for failure to file the same within the time prescribed in the Court's Resolution dated March 29, 2022.[1]

Petitioner seeks reconsideration of the Court's Decision promulgated on February 21, 2022 (Assailed Decision), the dispositive portion of which reads as follows:

> "Actions for tax refund or credit, as in the present case, are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven. Hence, an applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim but also compliance with all the documentary and evidentiary

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[1] Records Verification dated April 28, 2022.

requirements. Unfortunately for petitioner, it has failed to prove such entitlement.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED."

Petitioner assails this Court's Decision based on the following grounds, and we quote:

"I. THE HONORABLE COURT ERRED IN HOLDING THAT PETITIONER IS NOT A VAT REGISTERED PERSON FOR FAILURE TO REGISTER ITS PALAWAN FACILITY AS A BRANCH.

II. THE HONORABLE COURT ERRED IN HOLDING THAT PETITIONER FAILED TO ESTABLISH THAT ITS SERVICES WERE PERFORMED IN THE PHILIPPINES."

Petitioner takes exception to the ruling of the Court that it cannot be considered a "VAT-registered person" for failure to register its Palawan site as a "branch" as prescribed under Revenue Regulations (RR) No. 16-2005. Petitioner then makes a detailed narrative of the nature of its business as a call center which renders services to both domestic and offshore businesses and had established sites in various locations to meet the increasing need for bigger spaces to house its call center agents. One particular site is located in Puerto Princesa, Palawan (Palawan site) which, according to petitioner, does not stand alone or operate independently of its main office located in Pasig City, thus its registration (with the Bureau of Internal Revenue) [BIR] as a "facility" and not as a "branch." Petitioner reasons that their other sites including the Palawan site is similar to a "place of production" where the call center agents are located but all billings, invoices, marketing and collection remain to be conducted in its main office in Pasig City.

Petitioner additionally points out to a supposed error committed by the Court when it concluded that the documents it submitted during trial, particularly the Service Agreements, failed to establish that the services were performed in the Philippines. Petitioner disagrees and submits that the testimony and documents presented during trial proved that the services it performed were rendered to its non-resident foreign affiliates, such as the Securities and Exchange Commission (SEC) *am* registrations with attached Articles of Incorporation, the Service Agreements, various vouchers, certificates of inward remittance, sufficiently prove that services were performed here in the Philippines.

RULING OF THE COURT

We shall first resolve the timeliness of the filing of petitioner's *Motion for Reconsideration* with the Court.

On February 21, 2022, the Court issued a Decision in the above-captioned case, denying petitioner's claim for refund.

A copy of the assailed Decision was received by petitioner on March 2, 2022.[2] Pursuant to Section 1 of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), a party dissatisfied with a decision of the Court must file a motion for reconsideration or new trial within fifteen (15) days from receipt thereof, and we quote:

> "**Rule 15**
> **Motion for Reconsideration or New Trial**
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> **Section 1.** *Who may and when to file motion.* - Any aggrieved party may seek a reconsideration or new trial of any decision , resolution or order of the Court by filing a motion for reconsideration or new trial for fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question."

Counted from petitioner's receipt of the decision, petitioner had until March 17, 2022 to file its Motion for Reconsideration. The filing of petitioner's Motion for Reconsideration on March 17, 2022 shows that said motion was timely filed.

As to the substantive arguments raised in petitioner's motion for reconsideration, we rule in the negative.

The Petition for Review involves a claim for refund of alleged unutilized input value-added tax (VAT) arising from petitioner's purchases of goods (other than capital goods) and services and purchase of capital goods attributable to zero-rated

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[2] Court Docket, Volume II, page 1216-A.

transactions for the 4th quarter of taxable year (TY) 2016. In claims for refund of such nature, Section 112 of the 1997 National Internal Revenue Code (NIRC), as amended, guides, and we quote, in part, as follows:

> "SEC. 112. *Refunds or Tax Credits of Input Tax.* —
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> (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 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 sale and also in taxable or exempt sale of goods of 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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.
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> xxx xxx xxx
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> (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial."

The afore-quoted law, regulations and pertinent jurisprudence dictate several requirements to successfully prove entitlement to a claim for refund which were outlined in detail in the assailed Decision and that after an astute examination of the evidence adduced by petitioner, the Court points to the non-registration of petitioner's Palawan site as a branch as the primary deal breaker that led to the denial of the claim.

Petitioner argues that the registration of its Palawan site as a "facility" is sufficient as it does not conduct transactions therein independently of its main office and that its seeming late registration of said Palawan site is irrelevant for purposes of the refund claim because, if at all, such would only attract administrative penalties.

We disagree with petitioner.

As the assailed Decision clearly ruled, every person subject to any internal revenue tax, within a certain period of time is mandated to register with the BIR, and if such person maintains a head office, a branch or facility, such registration shall be made with the BIR office having jurisdiction over said branch or facility, pursuant to Section 236 of the 1997 NIRC, as amended and as implemented by RR 16-2005 specifically Section 9.236-1(a).

Also, registration as a VAT-registered person is an indispensable requirement for a claim for refund of input VAT.

Records show that petitioner's Palawan site was not yet registered at the time of the period of the claim for refund and that it should have registered the same as a branch with the BIR before the commencement or start of its business. We shall no longer belabor the nuances of the indispensable requirement of registration as this was already considered by the Court in the assailed Decision.

This Court also finds no meritorious argument in the motion for reconsideration to reverse the ruling that petitioner failed to establish that the subject services were performed in the Philippines. As the Court correctly ruled, the SEC certificates and BIR Registrations submitted by petitioner merely establish its existence and the fact of registration under Philippine laws. Even the Service Agreements do not specify where the said services are to be performed.

WHEREFORE, premises considered, petitioner's *Motion for Reconsideration (of the Decision dated February 21, 2022)* is **DENIED** for lack of merit.

Accordingly, the Decision of the Court in the above-captioned case dated February 21, 2022, is hereby **AFFIRMED.**

SO ORDERED.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice