REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SITEL PHILIPPINES CORPORATION, Petitioner,	**CTA CASE NO. 10012**
	Members:
- versus -	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 2 8 2022 3:07 pm

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RESOLUTION

DEL ROSARIO, P.J.:

This resolves petitioner's **Motion for Reconsideration (of the Decision dated July 11, 2022)** filed on July 28, 2022, with respondent's **Comment/Opposition** filed on August 15, 2022.

Petitioner prays for the Court to: (i) reconsider the Decision promulgated on July 11, 2022 (assailed Decision); (ii) declare petitioner entitled to a refund of the aggregate amount of ₱14,170,316.72, or in the alternative, the reduced amount of ₱9,123,896.03, as recommended by the Independent Certified Public Accountant (ICPA), representing unutilized input value-added tax (VAT) arising from petitioner's domestic purchases of goods (other than capital goods) and services, and purchases of capital goods exceeding one (1) million which are attributable to zero-rated sales for the third (3rd) quarter of taxable year (TY) 2016; and, (iii) order respondent to grant petitioner a refund in the said amount of ₱14,170,316.72, or in the alternative, the reduced amount of ₱9,123,896.03.

The dispositive portion of the assailed Decision reads:

> "**WHEREFORE,** in view of the foregoing, the present Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

Petitioner faults the Court in holding that petitioner's Palawan Site should be registered as a branch, and should have a separate VAT-registration.

Petitioner raises the following arguments:

1. Petitioner properly registered its Palawan Site as a facility as it is a mere cost center unit where services are produced or performed, akin to a place of production;

2. Petitioner cannot be faulted for relying in good faith on respondent's approval of its Palawan Site registration as a facility;

3. As a mere facility, the Palawan Site need not have a separate VAT registration; and,

4. Fairness and equity dictate that belated registration of a facility should only be meted with administrative penalty but not complete disregard of the zero-rated sales and the refundable nature of the input VAT attributable thereto.

Respondent, on the other hand, prays for the denial of petitioner's motion and raises the following arguments:

1. Petitioner is not entitled to the claim of input VAT refund;

2. The Court is correct in its Decision that the Palawan Site falls under facility with sales activities, hence should be considered as a branch that requires a separate VAT registration from its head office;

3. Petitioner cannot allege good faith in this case considering that they were the ones who applied for registration of its Palawan Site; and,

4. Claims for refund are construed strictly against the taxpayer and in favor of the government.

THE COURT'S RULING

After careful evaluation of the parties' respective arguments, the Court resolves to deny petitioner's Motion for Reconsideration.

As found in the assailed Decision, a facility where sales activities are generated or conducted is considered a branch, which is required to have its own VAT registration.

In *Commissioner of Internal Revenue vs. American Express International, Inc. (Philippine Branch)*,[1] the Supreme Court elucidated on the tax situs of VAT zero-rated sales, *viz.*:

> "*Tax Situs of a Zero-Rated Service*
>
> The law neither makes a qualification nor adds a condition in determining the tax situs of a zero-rated service. Under this criterion, **the place where the service is rendered determines the jurisdiction to impose the VAT**. Performed in the Philippines, such service is necessarily subject to its jurisdiction, for the State necessarily has to have "a substantial connection" to it, in order to enforce a zero rate. **The place of payment is immaterial; much less is the place where the output of the service will be further or ultimately used**." (*Boldfacing supplied*)

Considering that the subject zero-rated services were generated in its Palawan Site, it is where the situs of the zero-rated sales is. Thus, as a facility with sales activities, the Palawan Site is considered a branch requiring separate VAT registration.

Petitioner's contention that the Palawan Site is a mere cost center unit where services are produced or performed, akin to a place of production is bereft of merit. The fact that all dealings and transactions with affiliates including billing, invoicing, marketing and collection are conducted in the Main Office is immaterial. Truth to tell, what is controlling is the place where the services were generated, rendered or performed, and not the ancillary functions attendant thereto.

Verily, petitioner should have registered its Palawan Site as a branch with the BIR. Its failure to do so is fatal to its refund claim. The fact that petitioner registered the same as a facility is immaterial to petitioner's refund claim considering that the Certification of Registration of Facility was issued only on August 9, 2017, well after

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[1] G.R. No. 152609, June 29, 2005.

the 3rd quarter of TY 2016, the period of the subject refund claim. To add to the injury, what petitioner did was an improper registration.

Anent petitioner's argument that it cannot be faulted for relying in good faith on respondent's approval of its Palawan Site registration as a facility, the same is untenable. The fact is that its registration as a facility was well after the 3rd quarter of TY 2016. Thus, it is clear that during the period of the subject refund claim, petitioner's Palawan Site was neither registered as facility or branch. It was therefore not a VAT-registered entity during the 3rd quarter of TY 2016.

Finally, petitioner's argument that the belated registration of a facility should only be meted with administrative penalty but not complete disregard of the zero-rated sales and the refundable nature of the input VAT attributable thereto is bereft of merit.

Section 236 of the National Internal Revenue Code of 1997, as amended, governs the registration requirements of every person subject to internal revenue tax, including VAT. The relevant parts of the provision read as follows:

> "SEC. 236. Registration Requirements. –
>
> (A) *Requirements.* – Every person subject to any internal revenue tax shall register once with the appropriate Revenue District Officer:
>
> (1) Within ten (10) days from date of employment, or
>
> (2) **On or before the commencement of business**, or
>
> (3) Before payment of any tax due, or
>
> (4) Upon filing of a return, statement or declaration as required in this Code.
>
> The registration shall contain the taxpayer's name, style, place of residence, business, and such other information as may be required by the Commissioner in the form prescribed therefor. *Provided*, that the Commissioner shall simplify the requirements of self-employed individuals and/ or professionals.
>
> **A person maintaining a head office, branch or facility shall register with the Revenue District Officer having jurisdiction over the head office, branch or facility. For purposes of this Section, the term 'facility' may include but not limited to sales outlets, places of production, warehouses or storage places.**

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(B) *Annual Registration Fee.* - **An annual registration fee in the amount of Five hundred pesos (P500) for every separate or distinct establishment or place of business, including facility types where sales transactions occur, shall be paid upon registration and every year thereafter on or before the last day of January**: xxx

The registration fee shall be paid to an authorized agent bank located within the revenue district, or to the Revenue Collection Officer, or duly authorized Treasurer of the city or municipality where each place of business or branch is registered.

xxx xxx xxx

(G) Persons Required to Register for Value-Added Tax. -

(1) Any person who, in the course of trade or business, sells, barters or exchanges goods or properties, or engages in the sale or exchange of services, shall be liable to register for Value-added tax if:

(a) His gross sales or receipts for the past twelve (12) months, other than those that are exempt under section 109 (a) to (u), have exceeded One million five hundred thousand pesos (P1,500,000); or

(b) There are reasonable grounds to believe that his gross sales or receipts for the next twelve (12) months, other than those that are exempt under Section 109 (A) to (U), will exceed one million five hundred thousand pesos (P1,500,000).

(2) Every person who becomes liable to be registered under paragraph (1) of this Subsection shall register with the Revenue District Office which has jurisdiction over the head office or branch of that person, and shall pay the annual registration fee prescribed in Subsection (B) hereof. <u>If he fails to register, he shall be liable to pay the tax under Title IV as if he were a VAT-registered person, but without the benefit of input tax credits for the period in which he was not properly registered.</u>

xxx xxx" *(Emphasis and Underscoring supplied)*

Based on the afore-quoted provision, a VAT-registrable person who fails to register shall be liable to pay VAT as if he were a VAT-registered person but without the benefit of input tax credits for the period in which he is not properly registered. Considering that petitioner's Palawan Site was not a VAT-registered entity during the 3rd quarter of TY 2016, any input VAT arising from its domestic purchases of goods (other than capital goods) and services and purchases of capital goods attributable to its zero-rated transactions for the 3rd quarter of TY 2016 cannot be used to offset its output VAT nor be claimed for refund if unutilized.

To reiterate, petitioner failed to sufficiently prove its entitlement to a refund of its input VAT arising from its domestic purchases of goods (other than capital goods) and services and purchases of capital goods attributable to its zero-rated transactions for the 3rd quarter of TY 2016.

All told, the Court finds no cogent reason to warrant a reconsideration or modification of the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (of the Decision dated July 11, 2022)** is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice