REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Petitioner,	**CTA CASE NOS. 8720, 8736, 8754 & 8767**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 14 2020 4:15 pm

x- x

RESOLUTION

CASTAÑEDA, JR., J.:

Submitted before this Court are the following, *viz.*:

1. respondent's **Motion for Reconsideration [Decision dated 14 October 2019]**, filed on November 4, 2019, without petitioner's comment, as per Records Verification dated December 18, 2019; and

2. petitioner's **Motion for Partial Reconsideration (Re: Decision dated October 14, 2019)** filed, through registered mail, on November 4, 2019, and received by this Court on November 11, 2019, with respondent's **Comment (On Petitioner's Motion for Reconsideration dated 04 November 2019)**, filed on December 6, 2019.

On October 14, 2019, a Decision was promulgated by this Court for the present consolidated cases, which partially granted petitioner's claim for refund of its unutilized input value-added tax (VAT) for calendar year 2012, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petitions for Review are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱68,879,499.15, representing the latter's unutilized excess input VAT attributable to its zero-rated sales for the four quarters of CY 2012.
>
> **SO ORDERED.**

Undaunted, both parties seek reconsideration of the above Decision.

Respondent's Motion for Reconsideration

In his Motion, respondent primarily argues that, contrary to this Court's Decision, petitioner failed to sufficiently prove its compliance with the requisites enunciated in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[1] *("Burmeister case")*, regarding claims for refund of zero-rated sales of services under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent explains that while petitioner's primary purpose in its Articles of Incorporation does not include processing, manufacturing, or repacking of goods, such fact alone cannot mean to say that petitioner complied with the first requisite – that the services must be other than processing, manufacturing or repacking of goods. Respondent further claims that no evidence was also presented in the present consolidated cases that would sufficiently establish that the services rendered by petitioner to its clients were indeed performed in the Philippines, as required under the third requisite of the *Burmeister* case.

More so, respondent further asserts that petitioner failed to submit all relevant documents that would substantiate that the amount sought to be refunded is directly attributable to its zero-rated sales. Nonetheless, in any case, respondent claims that petitioner failed to exhaust administrative remedies before elevating the instant cases before this Court, which thereby ought to result in the outright dismissal of its claim for refund.

---

[1] G.R. No. 153205, January 22, 2007.

After due consideration, respondent's Motion for Reconsideration is bereft of merit.

Petitioner was able to establish that it had indeed performed services other than processing, manufacturing, or repacking of goods.

Contrary to respondent's belief that petitioner's primary purpose in its Articles of Incorporation is insufficient proof to determine the actual services it performs, Section 45 of the Corporation Code states that "[n]o corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred."

Accordingly, in ascertaining the nature of business and the type of service/s being performed by a certain corporation, this Court may rely on the purpose clause stated in the Articles of Incorporation since the same confers, as well as limits, the powers that a corporation may exercise. Evidently, it is through the purpose clause that prospective investors shall know the kind of business the corporation deals with; the management shall know the limits of their actions; and third party can know whether his/her dealings with the corporation are within its corporate functions and powers.

With regard to respondent's claim that no evidence was presented by petitioner which would establish the type of services it performs and the place where it had rendered the said services, the same had already by clarified by petitioner's Legal Entity Controller, Ms. Maricel Tio-Balagtas, who has testified on the said matters and was even cross-examined by respondent's counsel, to wit:

Ms. Tio-Balagtas' Judicial Affidavit:

"Q6: As the Legal Entity Controller, can you state the nature of Petitioner's business?

A: Yes. Petitioner, which is a multinational company organized and existing under and by virtue of the laws of Singapore, is licensed to do business as a regional operating headquarters (ROHQ) in the Philippines to engage in general administration and planning; business planning and coordination; sourcing /procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development.

Specifically, Petitioner acts as a shared services center, which handles regional, as well as global, accounting and related controlling processes, such as accounting production work in the global general ledger in SAP, developing and operating inter-company clearing house, accounting and head office reporting for non-regulated entities and product control.

Q7: What is your proof in saying so?

A: We have Petitioner's Certificate of Registration and License issued by the Securities and Exchange Commission (SEC) on April 25, 2005."[2]

Cross Examination by Atty. Niña Suzette M. Mendoza:

"ATTY. MENDOZA:

Q. You mentioned in your answer to Question No. 6 that petitioner is engaged in business as a regional operating headquarters in the Philippines?

MS. TIO-BALAGTAS:

A. Yes.

ATTY. MENDOZA:

Q: And also, you mentioned that **petitioner acts as shared services center which handles regional, as well as global accounting and related controlling processes**. Correct?

[2] Exhibit "P-4394", Docket (vol. V), p. 3642.

MS. TIO-BALAGTAS:

A. Yes.

ATTY. MENDOZA:

Q: So, you mean that petitioner acts as shared Services center in the Philippines and also performs services outside the Philippines?

MS. TIO-BALAGTAS:

A. **The company is engaged in business rendering services in the Philippines, providing services to clients outside the Philippines**?

ATTY. MENDOZA:

Q. You answered to Question No. 10, petitioner purchased goods and services in the course or rendering services as a shared services center to clients outside the Philippines. Correct?

MS. TIO-BALAGTAS:

A. Yes.

ATTY. MENDOZA:

Q. Any you identified several agreements, service agreements, profile, facts sheets and other certifications from SEC. Correct? In your answer to Question No. 12.

MS. TIO-BALAGTAS:

A. Yes.

ATTY. MENDOZA:

Q: This only proves that these clients are addressed or located outside the Philippines. Correct?

MS. TIO-BALAGTAS:

A. Yes.

ATTY. MENDOZA:

Q. But it does not necessarily show that the services were rendered outside the Philippines?

MS. TIO-BALAGTAS:

A. **The Inter-Group Service Agreement would also show that services are rendered in the Philippines.**

ATTY. MENDOZA:

Q. **Rendered in the Philippines?**

MS. TIO-BALAGTAS:
A. **Yes.**"[3]

Hence, considering that respondent presented no controverting evidence to prove otherwise, the said Articles of Incorporation, Inter-Group Service Agreements, and testimony of Ms. Tio-Balagtas have sufficiently proven petitioner's compliance with the first requisite.

Petitioner was able to prove that the amount sought to be refunded is attributable to its zero-rated sales.

Respondent also argues that petitioner failed to prove that the amount sought to be refunded is directly attributable to its zero-rated sales.

This Court is not convinced.

Section 112(A) of the NIRC of 1997, as amended, does not require that the input taxes subject of a claim for refund be directly attributable to zero-rated sales. Suffice it to say that the subject input taxes bears a direct or indirect connection with a taxpayer's zero-rated sales. In fact, the said provision even allows the allocation of input taxes in case the same cannot be directly and entirely attributable to any of the sales, *viz.*:

---

[3] Transcript of Stenographic Notes taken during the Hearing on November 28, 2017, pp. 10 to 12.

SEC. 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 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: x x x 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***. x x x."

Respondent has no factual basis in claiming that petitioner failed to submit complete documents.

As to petitioner's alleged failure to submit all relevant documents to substantiate its claim for refund, the said issue have already been resolved in the assailed Decision in this wise, *viz.*:

"In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue (Pilipinas Total Gas, Inc. Case)*, the Supreme Court emphasized the right of the Commissioner of Internal Revenue (CIR) to demand the submission of additional supporting documents from the taxpayer for the proper determination of the latter's entitlement to its claim for refund; the need for the CIR to send a written notice informing the taxpayer that the documents submitted before the Bureau of Internal Revenue were incomplete; and the adverse consequence of failing to give such written notification to the taxpayer, in this wise:

'To summarize, for the just disposition of the subject controversy, the rule is that from the date an administrative claim for excess unutilized VAT is filed, a taxpayer has thirty (30) *[initial]* days within which to submit the documentary requirements sufficient to support his claim, unless given further extension by the CIR. Then, upon filing by the taxpayer of his complete documents to support his application, or expiration of the period given, the CIR has 120 days within which to decide the claim for tax credit or refund. Should the taxpayer, on the date of his filing, manifest that he no longer wishes to submit any other addition documents to complete his administrative claim, the 120-day period allowed to the CIR begins to run from the date of filing.

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112 (A) of the NIRC. The 30-day period from denial of the claim or from the expiration of the 120-day period within which to appeal the denial or inaction of the CIR to the CTA must also be respected.

It bears mentioning at this point that the foregoing summation of the rules should only be made applicable to those claims for tax credit or refund filed prior to June 11, 2014, such as the claim at bench.

x x x

The alleged failure of Total Gas to submit the complete documents at the administrative level did not render its petition for review with the CTA dismissible for lack of jurisdiction. First, the 120-day period had commenced to run and the 120+30 day period was, in fact, complied with. As already discussed, it is the taxpayer who determines when complete documents have been submitted for the purpose of the running of the 120-day period. It must again be pointed out that this in no way precludes the CIR from requiring additional documents necessary to decide the claim, or even denying

> the claim if the taxpayer fails to submit the additional documents requested.
>
> Second, the CIR sent no written notice informing Total Gas that the documents were incomplete or required it to submit additional documents. As stated above, such notice by way of a written request is required by the CIR to be sent to Total Gas. Neither was there any decision made denying the administrative claim of Total Gas on the ground that it had failed to submit all the required documents. It was precisely the inaction of the BIR which prompted Total Gas to file the judicial claim. Thus, by failing to inform Total Gas of the need to submit any additional document, the BIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents.'

The above pronouncement was reiterated by the Supreme Court in the more recent cases of *Commissioner of Internal Revenue vs. Semirara Mining Corp.* and *Commissioner of Internal Revenue vs. Team Energy Corp.*

Records show that upon submission of various documents in support of its claim for refund, petitioner did not receive any written notice from respondent requiring it to submit additional document or informing it that the documents submitted were inadequate or incomplete. Thus, following the doctrine in *Pilipinas Total Gas, Inc. Case,* respondent cannot now argue that petitioner failed to submit complete documents. Consequently, the counting of the 120-day period should be reckoned from the filing of petitioner's administrative claims for refund.

Applying, therefore, Section 112(C) of the NIRC of 1997, as amended, petitioner's judicial claims for the four quarters of CY 2012 were likewise timely filed within the '120-30' day period."

That having been settled, this Court shall now address petitioner's Motion for Partial Reconsideration. *gc*

Petitioner's Motion for Reconsideration

In its Motion, petitioner argues that it was able to prove, by preponderant evidence, that all of its zero-rated sales for the four (4) quarters of CY 2012 were made to non-resident foreign corporations doing business outside of the Philippines. According to petitioner, while the Certificates of Non-Registration of Corporation issued by the SEC proved that the named entities therein are not registered corporations/partnerships in the Philippines, the IntraGroup Service Agreements (IGSA) with petitioner's foreign clients and foreign business registration documents can all prove that its clients are branches, subsidiaries or segments of Deutsche Bank Group of Companies which have business domiciles outside of the Philippines.

Petitioner also claims that the business registration documents, issued by respective foreign government agencies having jurisdiction over the places of business of petitioner's foreign clients, should be given the same probative value as the Articles of Incorporation/Association required by this Court. Further, petitioner claims that the SEC Negative Certificates are sufficient to prove that the said entities are not doing business in the Philippines.

Lastly, petitioner insists that actual presentation of official receipts is not among the requisites provided under Section 108(B)(2) of the Tax Code in proving zero-rated sales of service. Accordingly, it is enough that the taxpayer, through the facilities of the banking system, is able to report to and account the inward remittances to the BSP.

After due consideration of the petitioner's Motion for Partial Reconsideration, this Court notes that the arguments raised therein are reiterations of which have already been considered, weighed and resolved in the assailed Decision. As such, to discuss them anew would be mere superfluity.

WHEREFORE, in light of the foregoing considerations, respondent's Motion for Reconsideration [Decision dated 14 October 2019] and petitioner's Motion for Partial Reconsideration (Re: Decision dated October 14, 2019) are both **DENIED** for lack of merit.

SO ORDERED.

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

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice