REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

ACCENTURE, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB No. 477
(C.T.A. Case No. 7046)

Present:
Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:
SEP 2 2 2009

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DECISION

CASTAÑEDA, JR., J.:

On appeal are the Decision dated November 13, 2008 dismissing Accenture's Petition for Review due to insufficiency of evidence, and the Resolution dated March 12, 2009 denying its Motion for Reconsideration, both issued by the Court in Division in the case entitled "Accenture, Inc. vs. Commissioner of Internal Revenue" docketed as C.T.A. Case No. 7046.

The case involves refund or issuance of a tax credit certificate of alleged unutilized input value-added tax ("VAT") attributable to domestic purchases of goods and services in the amount of P35,178,844.21 for the period July 1, 2002 to November 30, 2002.

THE FACTS

Accenture, Inc., ("Accenture"), a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines is engaged in the business of providing management consulting and management information consulting services, including but not limited to, business strategies development, 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 and other related business activities. It is registered with the Bureau of Internal Revenue ("BIR"), with Taxpayer Identification Number ("TIN") 000-845-543-000 VAT.[1]

The Commissioner of Internal Revenue ("Commissioner") is vested with authority to perform, *inter-alia*, decide disputed assessments, refund of erroneously paid internal revenue taxes, fees or other charges, penalties, or other matters arising under the 1997 National Internal Revenue Code ("NIRC") or other laws administered by the BIR.

[1] Joint Stipulation of Facts and Issues, Division Docket, pp. 98-99.

Accenture filed Quarterly VAT Returns for the following period:

Fourth quarter of year 2002 (covering the period from June 1, 2002 to August 31, 2002

Purchases	Amount	Input VAT
Domestic Purchases –Capital Goods	12,312,722.00	P 1,231,272.20
Domestic Purchases – Goods other than Capital Goods	64,789,507.90	6,478,950.79
Domestic Purchases –Services	16,455,868.10	1,645,586.81
Total Input Tax		**P 9,355,809.80**
Zero-rated Sales		P 316,113,513.34
Total Sales		P 335,640,544.74[2]

First quarter of 2003(covering the period from September 1, 2002 to November 30, 2002)

Purchases	Amount	Input VAT
Domestic Purchases-Capital Goods	80,765,294.10	P 8,076,529.41
Domestic Purchases – Goods other than Capital Goods	132,820,541.70	13,282,054.17
Domestic Purchases – Services	63,238,758.00	6,323,875.80
Total Input Tax		**P 27,682,459.38**
Zero-rated Sales		P 545,686,639.18
Total Sales		P 572,880,982.68[3]

Convinced that it is entitled to the excess or unutilized input Value Added Tax ("VAT") credits, Accenture sought before the Department of Finance through its One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center a claim for refund or issuance of tax credit in the aggregate amount of P35,178,844.21 representing unutilized input VAT on domestic purchases of goods and services for the period covering July 1, 2002 to August 31, 2002 and September 1, 2002 to November 30, 2002, instead of the amount of P37,038,269.00 as declared per VAT returns. Jc

[2] Exhibit "E". Division Docket, p. 168.
[3] Exhibit "K". Division Docket, p. 174.

On August 31, 2004, Accenture filed a Petition for Review docketed as C.T.A. Case No. 7046 before the Court in Division as against the Commissioner.

During pre-trial, the parties stipulated the following issues:

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.
2. Whether or not petitioner's claim for refund/tax credit in the amount of P35,178,844.21 represents unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002.
3. Whether or not Petitioner has carried over to the succeeding taxable quarter(s) or year(s) the alleged unutilized input VAT paid on its domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002, and applied the same fully to its output VAT liability for the said period.
4. Whether or not Petitioner is entitled to the refund of the amount of P35,178,844.21, representing the unutilized input VAT on domestic purchases of goods and services for the period commencing from 1 July 2002 until 30 November 2002, from its sales of services to various foreign clients.
5. Whether or not Petitioner's claim for refund/tax credit in the amount of P35,178,844.21, as alleged unutilized input VAT on domestic purchases of goods and services for the period covering 1 July 2002 until 30 November 2002 are duly substantiated by proper documents.[4]

The parties subsequently proffered their documentary and testimonial evidence.

On July 3, 2007, the Commissioner through counsel manifested that the Department of Finance denied Accenture's claim for refund.[5] Jr

[4] Joint Stipulation of Facts and Issues, Division Docket, pp. 99-100.
[5] Division Docket, p. 250.

In ruling against Accenture, the Court in Division issued a Decision dated November 13, 2008 dismissing its Petition for Review due to insufficiency of evidence. The Division reasoned that Accenture is disqualified to a refund of unutilized input VAT of P35,178,844.21 covering the period July 1, 2002 until November 30, 2002 due to its failure to prove that its foreign clients who are the recipient of services are doing business outside the Philippines and thus, such transactions should not be treated as zero-rated.[6]

THE ISSUE

Accenture moved to reconsider the Decision dated November 13, 2008; however, the Division denied the same in the Resolution dated March 12, 2009.[7] Hence, this Petition for Review with the Court *en banc* premised on the sole issue that:

> Whether or not the Court in Division correctly ruled in denying Petitioner's Petition for Review and Motion for Reconsideration on the ground that Petitioner failed to present evidence to prove that foreign clients to whom it rendered services are clients doing business outside the Philippines.[8]

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[6] *en banc* Docket, pp. 28-37. Penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.
[7] *en banc* Docket, pp. 39-41.
[8] *en banc* Docket, p. 13.

According to Accenture, the Division erred in concluding that it failed to establish zero-rated sales because as claimant, it should have satisfied the requirement, its foreign clients are doing business outside the Philippines.

To qualify for zero-rating under Section 108(B)(2) of the 1997 NIRC, it is sufficient that services rendered were paid for in acceptable foreign currency and accounted for in accordance with Bangko Sentral ng Pilipinas ("BSP") regulations.

Republic Act ("R.A.") No. 9337 introduced the requirement that services must be 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 were rendered as one of the conditions to qualify for zero-rating. R.A. No. 9337 took effect on November 1, 2005; and prior to this amendment, no such requirement was imposed.

Laws shall have no retroactive effect, unless the contrary is provided. R.A. 9337 does not provide for its retroactivity.

Assuming for the sake of argument that Section 108(B)(2) of the 1997 NIRC applies, as amended by R.A. 9337, Accenture presented adequate evidence to show that the foreign clients to whom it rendered services were doing business outside the Philippines.

The Commissioner counters that Accenture failed to submit evidence to establish that the foreign clients to whom it rendered services are doing business outside the Philippines in accordance with the Supreme Court's ruling in the Burmeister case.

Although Ms. Loida Samson and Mr. Emmanuel Mendoza testified that most of Accenture's clients are foreign entities, the Court cannot simply presume that these foreign clients are performing business outside the Philippines under Section 108 (A) of the 1997 NIRC.

THIS COURT'S RULING

The Petition focuses on two key grounds: whether or not the applicable law mandates that the recipient of services is doing business outside the Philippines relative to VAT zero rating transaction; and if there is such a requirement, whether or not Accenture as claimant duly established the same by documentary or testimonial evidence.

The 1997 NIRC, or R.A. No. 8424 or also known as the "The Tax Reform Act of 1997" took effect on January 1, 1998; while R.A. No. 9337 became operative on November 1, 2005.

Considering that the instant case pertains to the third and fourth quarters of taxable year 2002, the applicable law is the 1997 NIRC, and not R.A. No. 9337.

The Division's Decision dated November 13, 2008 is anchored on the Supreme Court's Ruling in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* [9] involving refund of erroneously paid VAT for the year 1996.

While it is true the Burmeister case is covered by the 1977 Tax Code, as amended, and not the 1997 NIRC, the case at bar finds solace therein emphasizing the requirement that the recipient of services must be doing business outside the Philippines for purposes of determining zero-rated sales transaction.

Section 108 (B)(2) of the 1997 NIRC replicated Section 102(b) of the 1977 Tax Code, as amended, reading:

> (b) *Transactions subject to zero-rate.* – The following services performed in the Philippines by VAT-registered persons shall be subject to 0%:
>
> (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 sub-paragraph, the consideration for which is paid 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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[9] G.R. No. 153205, January 22, 2007.

> "**SEC. 108. Value-added Tax on Sale of Services and Use or Lease of Properties**. –
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> xxx xxx xxx
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> "**(B)** Transactions 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);
>
> "**(2)** Services other than those **mentioned in the preceding paragraph**, the consideration for which is paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP); (Emphasis supplied.)

In the Burmeister case, the Supreme Court harmonized both Sections 102(b)(1) and 102(b)(2) of the 1977 Tax Code, as amended, pertaining to zero-rated transactions. A parallel approach should be accorded to the renumbered provisions of Sections 108(B)(2) and 108(B)(1) of the 1997 NIRC. This means that Section 108(B)(2) must be read in conjunction with Section 108(B)(1). Section 108(B)(2) requires as follows: a) services other than processing, manufacturing or repacking rendered by VAT registered persons in the Philippines; and b) the transaction paid for in acceptable foreign currency duly accounted for in accordance with BSP rules and regulations. The same provision made reference to Section 108(B)(1) further imposing the requisite c) that the recipient of services must be performing business outside the Philippines. Otherwise, if both the provider and recipient of service are doing business in the Philippines, the sale transaction is subject to regular VAT as explained in the *Burmeister* case, stating:

xxx xxx xxx

> Services covered by Section 102(b)(1) and (2) are in the nature of export sales since the payer-recipient of services is doing business outside the Philippines. Under BSP rules, the proceeds of export sales must be reported to the *Bangko Sentral ng Pilipinas*. Thus, there is reason to require the provider of services under Section 102(b)(1) and (2) to account for the foreign currency proceeds to the BSP. The same rationale does not apply if the provider and recipient of the services are both doing business in the Philippines since their transaction is not in the nature of an export sale even if payment is denominated in foreign currency.
>
> **Further, when the provider and recipient of services are both doing business in the Philippines, their transaction falls squarely under Section 102(a) governing domestic sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provisions of Section 102(b).**
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> Thus, when Section 102(b)(2) speaks of "[s]ervices other than those mentioned in the preceding subparagraph," the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs.
>
> Significantly, the amended Section 108(b) [previously Section 102(b)] of the present Tax Code clarifies this legislative intent. Expressly included among the transactions subject to 0% VAT are "[s]ervices other than those mentioned in the [first] paragraph [of Section 108(b)] 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, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.[10] (Emphasis supplied.)

[10] *Ibid.* See *Mitsui & Company LTD. Manila Branch vs. Commissioner of Internal Revenue*, C.T.A. Case No. 7342, January 5, 2009 and *Parlance Systems, Inc. vs. Commissioner of Internal Revenue*, C.T.A. Case No. 7459, July 9, 2009.

Clearly, the Supreme Court's pronouncements in the Burmeister case requiring that the recipient of the services must be doing business outside the Philippines as mandated by law govern the instant case.

Contrary to Accenture's posture, the requisite referring to processing, manufacturing, repacking or other services rendered by a VAT registered persons in the Philippines ***to persons performing business abroad*** is incorporated in the 1997 NIRC, 1977 Tax Code, as amended, and R.A. 9337 notwithstanding the variances in the wordings of each statute.

The law must be read in its entirety. A statute is passed as a whole, and is animated by one general purpose and intent. Its meaning cannot be extracted from any single part thereof but from a general consideration of the statute as a whole.[11]

Accenture further points that reliance on the Supreme Court's Decision in the Burmeister case is misplaced because it was promulgated on January 22, 2007 or after the filing of the Petition with the Division. While it is true that the Burmeister case forms part of the legal system and assumes the same authority as the statute itself, however, the same cannot be applied retroactively against Accenture, otherwise, to do so will be prejudicial to the latter.

[11] *Romeo P. Gerochi, et al. v. Department of Energy, et al.,* G.R. No. 159796, July 17, 2007, 527 SCRA 696 citing the case of *Freedom from Debt Coalition v. Energy Regulatory Commission,* G.R. No. 161113, June 15, 2004, 432 SCRA 157, 182.

We are not persuaded.

Accenture cannot invoke the defense of non-retroactivity of Supreme Court rulings. The law takes effect upon its effectivity, and not upon interpretation by the Courts.

In the words of the Supreme Court:

> Judicial decisions applying or interpreting the laws or the Constitution, such as the Civil Liberties Union doctrine, form part of our legal system. Supreme Court decisions assume the same authority as valid statutes. **The Court's interpretation of the law is part of that law as of the date of enactment because its interpretation merely establishes the contemporary legislative intent that construed law purports to carry into effect**. [12] (Emphasis supplied.)

Accenture alleges that as a VAT registered person, it performs software development and business process outsourcing services in the Philippines to several Accenture companies doing business outside the country and receives payment from Accenture Participations B.V. in acceptable foreign currency inwardly remitted and accounted for in accordance with BSP rules and regulations. The Securities and Exchange Commission ("SEC") records disclose that these Accenture companies have not established any branch offices doing business in the Philippines. BIR records also reveal that these Accenture companies are not registered corporate taxpayers in the Philippines. Moreover, for services rendered to ge

[12] *National Amnesty Commission vs. Commission on Audit*, G.R. No. 156982, September 8, 2004, 437 SCRA 655; *Philippine Constitution Association vs. Salvador Enriquez*, et al., G.R. Nos. 113105, 113174, 113766 and 113888, August 19, 1994, 235 SCRA 506; and *Peter John Calderon, et al. vs. Bartolome Carale*, et al., G.R. No. 91636, April 23, 1992, 208 SCRA 254.

these companies, Accenture bills Accenture Participation B.V., also a foreign corporation which does not have any presence in the Philippines.

The services proving zero-rated sales under Section 108(B)(2) are corroborated by the testimony of Ms. Loida Samson, inter-company payment request, official receipts, billing statements, memo invoices-receivable, memo invoices-payable, and bank statements. In the report of independent certified public accountant, Mr. Emmanuel Mendoza, he ascertained that Accenture's gross billing as reflected in the inter-company payment request covering the period July 2002 to November 2002 pertaining to 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 Accenture's payable to Accenture Participations B.V.) were all accounted for in accordance with BSP rules and regulations.

Accenture's contention deserves scant consideration.

The documents presented by Accenture merely substantiate the existence of sale, receipt of foreign currency payments and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules; while Ms. Samson testified on sale transactions with foreign clients, all devoid of any evidence that these clients are doing business outside the Philippines.

As correctly observed by the Division:

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> In this case, the documents submitted by 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.
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> Even in the testimonial evidence presented by petitioner, there is nothing that will show that the "foreign clients" are doing business outside the Philippines xxx xxx xxx
>
> Likewise, even in the Report prepared by Mr. Emmanuel Mendoza, there is no indication or mention to the effect that petitioner's foreign clients are doing business outside the Philippines. Petitioner's allegation that its clients were "foreign clients" is not sufficient to meet the requirement of the law that the recipient of its service is doing business outside the Philippines.[13]

He who alleges has the burden of proof.[14] In the instant case, Accenture miserably failed to show through documentary and testimonial evidence that its foreign clients as the recipient of services are doing business outside the Philippines.

In view of the foregoing, the Court upholds the denial of Accenture's refund claim of P35,178,844.21 representing unutilized input VAT attributable to domestic purchases of goods and services for the period July 1, 2002 to November 30, 2002.

WHEREFORE, premises considered, the Decision dated November 13, 2008 and March 12, 2009 are **AFFIRMED**. The Petition for Review is hereby **DISMISSED**.

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[13] *en banc* Docket, p.36

[14] *Republic of the Philippines vs. Estate of Hans Menzi*, G.R. Nos. 152578, 154487 and 154518. November 23, 2005, 476 SCRA 20.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, 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