REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AMADEUS MARKETING PHILIPPINES, INC.,
Petitioner,

CTA EB NO. 1483
(CTA CASE NO. 8628)

-versus-

Present:
Del Rosario, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, *and*
Manahan, ***JJ.***

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 2 1 2018 8:19 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

Submitted for resolution is the petitioner's "Motion for Reconsideration *(Re: Decision dated October 9, 2017)*" filed on November 16, 2017.

Petitioner seeks reconsideration of the Court *En Banc's* Decision, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED for lack of merit**. Accordingly, the Decision

dated January 22, 2016 and Resolution dated June 22, 2016 are hereby affirmed.

SO ORDERED."

In the Motion for Reconsideration, petitioner alleged the following as its grounds for reconsideration:

A. Section 108 (B)(2) of the 1997 National Internal Revenue Code, as amended ("1997 NIRC") merely requires among others, that the zero-rated service be rendered in favor of a person engaged in business conducted outside the Philippines or to a non-resident person not engaged in business who is outside the Philippines when the services are performed. The law does not add a qualification who solely conducts business outside the Philippines; and
B. Appointing a distributor domiciled in the Philippines which transacts business in the distributor's own name and account shall not be deemed doing business in the Philippines.

In the Resolution[1] dated December 15, 2017, the Court *En Banc* required respondent to file his Comment on the "Motion for Reconsideration *(Re: Decision dated October 9, 2017).*" However, to date respondent has not filed his Comment.

After consideration, the Court *En Banc* resolves to deny the instant motion. The Court *En Banc* reviewed the grounds relied upon by petitioner in support of its Motion for Reconsideration but finds no cogent reason to grant the same. The arguments presented in the said motion were already passed upon, discussed and judiciously resolved in the assailed Decision dated October 9, 2017.

The Court *En Banc* reiterates its ruling that the Amadeus IT Group S.A. is doing business in the Philippines. The act of petitioner in withholding of payments to Amadeus IT Group S.A. shows that there is continuity of commercial dealings. Thus, petitioner was not able to prove that it is entitled to a refund or issuance of a tax credit certificated for its unutilized input VAT paid for the first, second, third and fourth quarters of 2011.

In the Assailed Decision, the Court *En Banc* ruled in this wise:

"In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* the Supreme Court held that in order for the supply of services to be considered VAT

[1] Rollo, CTA EB No. 1483, pp. 151-152.

zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be satisfied:

1. the services by a VAT-registered person must be other than processing, manufacturing or repacking of goods;
2. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3. the recipient of such services is doing business outside the Philippines.

Petitioner is a VAT-registered entity that renders services to its foreign affiliate Amadeus IT Group S.A. for the marketing, promotion and offering in the Philippines of its automated reservations and distribution system, the "Amadeus Global Travel Distribution", that incorporates a software package which performs various functions, including real-line airlines seat reservations, schedules bookings for a variety of air, boat, train package tours, car rental and hotel services, automatic ticketing and fare pricing displays in the Philippines. These services are not under the same category as "processing, manufacturing or repacking of goods'; hence, petitioner complied with the first requisite.

With regard to the third requisite, petitioner offered as evidence the Articles of Association of Amadeus IT Group S.A. and the Certificate of Non-Registration of Amadeus IT Group S.A. duly issued by the Securities and Exchange Commission (SEC).

However, petitioner failed to discharge its burden of complying with the third requisite. As held by the Supreme Court in *Accenture, Inc. vs. Commissioner of Internal Revenue*:

> "Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation."

The term "nonresident foreign corporation" applies to a foreign corporation not engaged in trade or business within the Philippines.

While the submitted documents prove that Amadeus IT Group S.A. is a foreign corporation organized and established under the laws of Spain, the records show that Amadeus IT Group S.A conducts business in the Philippines.

As can be gleaned from petitioner's Quarterly VAT returns, petitioner had input VAT on services rendered by foreign entities in the amounts of P3,973,690.80, P4,138,674.76, P4,295,766.62, and P3,538,970.58 for the first, second, third, and fourth quarters of 2011, respectively, or a total of P15,947,102.76. Per the Court-commissioned Independent Certified Public Accountant's (CPA) Schedule of Purchases of Goods and Services and Corresponding Input Tax for the Period of January 1 to December 31, 2011, out of the said reported input taxes, P14,522,179.83 was supported by Monthly Remittance Returns of VAT and Other Percentage Taxes Withheld (BIR Form No. 1600), *xxx*

xxx *xxx* *xxx*

Apparently, the foreign corporation that rendered services to petitioner in the Philippines and whose services were subjected to VAT, was also Amadeus IT Group S.A., to whom petitioner claims to have made its zero-rated sales.

xxx *xxx* *xxx*

The phrase *'in the course of trade or business'* means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by non-resident foreign persons shall be considered as being course of trade or business."

xxx *xxx* *xxx*

Considering that Amadeus IT Group S.A., the recipient of petitioner's services, is doing business in the Philippines, petitioner failed to comply with the third requisite to qualify for VAT zero-rating. Consequently, the second requisite for the refund or tax credit of input VAT under Section 112(A) of the NIRC of 1997, as amended, was also not satisfied."

In fine, this Court finds no cogent reason to deviate from the previous ruling that petitioner is not entitled to refund.

In the case of *Ferdinand Marcos et al. vs. Hon. Raul Manglapus et al.*[2], the Supreme Court emphasized that in all motions for reconsideration, the burden is upon the movant, petitioner herein, to show that there are compelling reasons to reconsider the decision of the Court. In present case, petitioner was not able to convince the Court *En Banc* that its ruling is erroneous, improper, contrary to law or evidence. Having failed to do so, the petitioner's Motion for Reconsideration must fail.

WHEREFORE, premises considered, the "Motion for Reconsideration *(Re: Decision dated October 9, 2017)*" is **DENIED for lack of merit**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

(I maintain my Concurring and Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(I maintain my Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

[2] *Marcos vs. Manglapuz*, G.R. No. 88211, October 27, 1989.