Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1145
(CTA Case No. 8012)

Present:
DEL ROSARIO, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN, *J.J.*

Promulgated:

JUN 09 2015
x- 3:53 p.m. - -x

RESOLUTION

CASANOVA, J.:

This resolves petitioner's Motion for Reconsideration filed, thru registered mail, on March 20, 2015, without respondent's comment thereon per Records Verification Report dated May 18, 2015.

Petitioner's Motion for Reconsideration prays that the Court *En Banc* reconsider its Decision dated February 18, 2015 by issuing a Resolution:

> "1. REVERSING and SETTING ASIDE the Decision dated June 26, 2013 and RESOLUTION dated March 12, 2014, both rendered by the Special Third Division of this Court; and

2. GRANTING Petitioner's claim for refund of or issuance of tax credit certificate in the amount of Php40,215,567.29 representing Petitioner's excess and unutilized input VAT for the 4th quarter of CY 2007; or alternatively,

3. REMANDING the case to the Special Third Division of this Court for further proceedings for the determination of Petitioner's entitlement to the amount of Php40,215,567.29 representing excess and unutilized input VAT for the 4th quarter of CY 2007."

Petitioner contends that its zero-rated sales for the 4th quarter of CY 2007 in the amount of Php40,215,567.29 was properly substantiated as: (a) it has sufficiently proved the existence of zero-rated sales of services to its foreign affiliates and (b) has properly substantiated its zero-rated sales in accordance and consistent with the accrual method of accounting.

Petitioner argues that it used the accrual accounting method for CY 2007 in recognizing income for VAT purposes; that this accounting method is allowed by Sections 43 and 44 of the Tax Code and was, likewise, recognized by the Supreme Court in the case of *Filipinas Synthetic Fiber Corporation vs. Court of Appeals*[1].

We find no merit in petitioner's motion.

As mandated under Section 106 of the National Internal Revenue Code (NIRC) of 1997, as amended, the VAT on the sale of goods or properties accrues upon the consummation of sale regardless of whether or not the consideration thereof was actually received. On the other hand, the VAT on the sale of services, use or lease of properties accrues upon actual or constructive receipt of the consideration irrespective of whether or not the service has been rendered pursuant to Section 108 of the NIRC of 1997, as amended.

In other words, for VAT purposes, the accrual method of accounting (i.e., the income is reported in the period it is earned regardless of whether it has been received or not) must be employed in the case of sale of goods or properties while the cash method of

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[1] G.R. No. 118498 & 124377, October 12, 1999

accounting (i.e., the income is reported based on gross receipts/collection) must be adopted in the case of sale of services, lease or use of properties.

Herein petitioner is engaged in the sale of services such as financial accounting; market and instrument control; expense, revenue and information; information systems integrity and application development and support services to its non-resident foreign affiliates. Such sales of services must be reported for VAT purposes using the cash method of accounting.

Assuming *arguendo*, that petitioner adopted the accrual method of accounting in reporting its income for VAT purposes, the Court in Division correctly found that petitioner failed to prove that its sales of services for the fourth quarter of CY 2007 were paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

It must be emphasized that one of the essential requisites in order for petitioner's sales of services to its non-resident foreign affiliates can be considered as VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the same must be paid for in acceptable foreign currency duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas. As correctly found by the Court in Division in its Decision dated June 26, 2013, petitioner failed to comply with this requisite. Below is the relevant portion of the Decision[2]:

> "As regards to the second requisite, petitioner miserably failed to demonstrate that the remittances of foreign currency payments correspond to its zero-rated sales. Even though it submitted in support of its inward remittances its Fund Transfer Credit Advices, it cannot be ascertained whether these remittances pertain to the company's zero-rated sales for that period and how much of the purported zero-rated sales were duly receipted. Noteworthy of emphasis that in its '*Summary of Gross Receipts for Period 01 October to 31 December 2007*', the official receipts amounts were not indicated. Besides, the official receipts submitted by the petitioner were not reconciled with the amounts per Bank Debit Advices. At

[2] En Banc Rollo, pp. 52-53

this juncture, it is to be stressed that petitioner as a claimant has the burden of proof to present all that is required for successful prosecution of its claim. Hence, mere allegation is not evidence and is not equivalent to proof."

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

(On Leave)
JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen S. L.
MA. BELEN M. RINGPIS-LIBAN
Associate Justice