REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

AMADEUS MARKETING PHILIPPINES, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9107

Members:

BAUTISTA, *Chairperson;*
FABON-VICTORINO,
and
RINGPIS-LIBAN, *JJ.*

Promulgated:
FEB 06 2018
11:32 a.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This is a Petition for Review[1] filed on July 30, 2015 by Amadeus Marketing Philippines, Inc. to seek the refund of the amount of ₱27,729,564.16, allegedly representing its unutilized input value- added tax (VAT) attributable to its zero-rated sales for the four (4) quarters of calendar year (CY) 2013.

STATEMENT OF FACTS

Petitioner Amadeus Marketing Philippines, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines, with

[1] Docket, Vol. 1, pp. 10-26.

address at 36th Floor, LKG Tower, 6801 Ayala Avenue, Makati City.[2] It is duly registered with the Securities and Exchange Commission (SEC) with Company Registration No. A1997-11194.[3] Petitioner is also a VAT-registered entity as evidenced by its Certificate of Registration No. OCN 9RC0000133815 and Taxpayer's Identification No. (TIN) 005-374-900-000 issued on January 1, 1998 by the Bureau of Internal Revenue (BIR).[4]

As stated in its Articles of Incorporation, petitioner is primarily engaged in the business of marketing an automated computerized reservations system called the "Amadeus Global Travel Distribution", which incorporates a software package that 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.[5]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On March 26, 2015, petitioner filed an application for VAT refund of the amount of ₱27,729,564.16 for the four (4) quarters of CY 2013 with the BIR Revenue District Office (RDO) No. 50, Makati Avenue, Makati City.[6] Petitioner likewise submitted supporting documents, including an affidavit under oath attesting to the completeness of the documents submitted.[7]

Respondent rendered a decision denying petitioner's claim for refund as per letter dated June 22, 2015, which was received by petitioner on July 2, 2015.[8]

As a result, petitioner filed the instant Petition for Review before this Court on July 30, 2015.

Respondent filed his Answer[9] through registered mail on August 18, 2015 and received by the Court on August 28, 2015, interposing the following defenses: that petitioner failed to demonstrate that the tax, which is the subject

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[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, Vol. 2, p. 576.
[3] Par. 4, JSFI, Docket, Vol. 2, p. 577.
[4] Par. 6, JSFI, Docket, Vol. 2, p. 577; Exhibit "P-2", Docket, Vol. 3, p. 1215.
[5] Par. 5, JSFI, Docket, Vol. 2, p. 577; Exhibit "P-3", Docket, Vol. 3, 1216-1222.
[6] Exhibits "P-26", "P-26-A", "P-26-B", "P-27", "P-27-A", and "P-27-B", Docket, Vol. 3, pp. 1445-1453.
[7] Exhibit "P-26-A", Docket, Vol. 3, p. 1452.
[8] Exhibit "P-28", Docket, Vol. 3, pp. 1454-1455. This exhibit was formally offered, presented and identified by Krizel Sansano in her Judicial Affidavit marked as Exhibit "P-90", Docket, Vol. 1, p. 289.
[9] Docket, Vol. 1, pp. 82-85.

of this case, was erroneously or illegally collected; that the taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable; that it is incumbent upon the Petitioner to show that it has complied with the provision of Section 204 (C) in relation to Section 229 of the 1997 Tax Code, as amended; that petitioner's claim for refund or issuance of tax credit certificate in the amount of Twenty Seven Million Seven Hundred Twenty Nine Thousand Five Hundred Sixty Four and 16/100 Pesos (Php27,729,564.16) as alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the four quarters of taxable year 2013 was not fully substantiated by proper documents, such as sales invoices, official receipts and others; that in a claim for tax refund or tax credit, taxpayer must prove not only entitlement to the grant of the claim under substantive law, it must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit (*Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, 518 SCRA 425); and that claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma*, 31 SCRA 95) and as such, they are looked upon with disfavour (*Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 121)."

The case was set for Pre-Trial Conference on October 20, 2015.[10] Respondent's Pre-Trial Brief[11] was filed through registered mail on October 6, 2015 and received by the Court on October 15, 2015; while petitioner's Pre-Trial Brief[12] was filed on October 15, 2015.

The parties filed their Joint Stipulation of Facts and Issues[13] on October 29, 2015. Thereafter, the Court issued a Pre-Trial Order[14] on November 26, 2015.

Petitioner presented Krizel Sansano[15], Myra Luna Davalos[16], and Independent Certified Public Accountant (CPA) Joseph Cedric V. Calica as its witnesses.[17]

On July 27, 2016, petitioner filed its Formal Offer of Evidence[18], offering Exhibits "P-90", "P-90-A", "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-13", "P-13-A", "P13-B", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-26-A", "P-26-B", "P-27", "P-27-A", "P-27-B", "P-28", "P-92", "P-

[10] Notice of Pre-Trial Conference dated September 1, 2015, Docket, Vol. 1, pp. 87-88; Minutes of the hearing dated October 20, 2015, Docket, Vol. 2, p. 571.
[11] Docket, Vol. 1, pp. 89-92.
[12] Docket, Vol. 1, pp. 93-104.
[13] Docket, Vol. 2, pp. 576-581.
[14] Docket, Vol. 2, pp. 607-612.
[15] Minutes of the hearing dated March 1, 2016, Docket, Vol. 2, p. 641.
[16] Minutes of the hearing dated April 5, 2016, Docket, Vol. 3, p. 1127.
[17] Minutes of the hearing dated June 7, 2016, Docket, Vol. 3, p. 1151.
[18] Docket, Vol. 3, pp. 1173-1198.

92-A", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-54-a", "P-55", "P-55-a", "P-56", "P-56-a", "P-57", "P-57-a", "P-58", "P-58-a", "P-59", "P-59-a", "P-60", "P-60-a", "P-61", "P-61-a", "P-62", "P-62-a", "P-63", "P-63-a", "P-64", "P-64-a", "P-65", "P-65-a", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", "P-73", "P-74", "P-75", "P-76", "P-77", "P-78", "P-79", "P-80", "P-81", "P-82", "P-83", "P-84", "P-85", "P-86", "P-87", "P-88", "P-89", "P-149", "P-149-A", "P-148", "P-148-A", "P-101", "P-102", "P-102-1" to "P-102-1,159", "P-103", "P-104", "P-104-1" to "P-104-399", "P-105", "P-105-1", "P-105-2", "P-105-3", "P-105-4", "P-105-5", "P-105-6", "P-105-7", "P-105-8", "P-105-9", "P-105-10", "P-106-1" to "P-106-52" with sub-markings, "P-107 with sub-markings", "P-108-1" to "P-108-2" with sub-markings, "P-109-1" to "P-109-10" with sub-markings, "P-110", "P-111", "P-112-1" to "P-112-2" with sub-markings, "P-113", "P-113-1" to "P-113-12", "P-114", "P-115", "P-116", "P-116-1" to "P-116-12", "P-117", "P-118", "P-119", "P-120", "P-121", "P-122", "P-123", "P-124", "P-125", "P-126", "P-127", "P-128", "P-129", "P-130", "P-131", "P-132", "P-133", "P-134", "P-135", "P-136", "P-137", "P-138", "P-139", "P-140", "P-141", "P-142", "P-143", "P-144", "P-145", "P-146", "P-147", "P-5", "P-6", "P-7", "P-8", and "P-9" as its documentary evidence. Respondent filed his Comment (To: Petitioner's Formal Offer of Evidence)[19] through registered mail on July 29, 2016 and received by the Court on August 10, 2016.

In the Resolution[20] dated September 8, 2016, the Court admitted all of the above-enumerated formally offered exhibits as petitioner's evidence.

On the other hand, respondent, through counsel, manifested that he has no other witness to present. Thus, the Court ordered the parties to simultaneously file their respective memoranda.[21]

The Memorandum for Respondent[22] was filed through registered mail on December 23, 2016 and received by the Court on January 11, 2017; while petitioner's Memorandum[23] was filed on February 6, 2017. Hence, the case was declared submitted for decision on February 10, 2017.[24]

STATEMENT OF THE ISSUES

The parties stipulated the following issues for this Court's resolution:[25]

[19] Docket, Vol. 4, pp. 1633-1634.
[20] Docket, Vol. 4, pp. 1637-1638.
[21] Minutes of the hearing dated December 6, 2016, Docket, Vol. 4, p. 1639.
[22] Docket, Vol. 4, pp. 1647-1652.
[23] Docket, Vol. 4, pp. 1654-1677.
[24] Resolution dated February 10, 2017, Docket, Vol. 4, p. 1679.
[25] JSFI, Docket, Vol. 2, pp. 577-578.

A. Whether petitioner is entitled to refund for the unutilized VAT input taxes in the total amount of Twenty Seven Million Seven Hundred Twenty Nine Thousand Five Hundred Sixty Four & 16/100 (₱27,729,564.16), representing unutilized VAT input taxes for the 1st, 2nd, 3rd and 4th quarters of the taxable year 2013.

B. Whether petitioner is engaged in zero-rated or effectively zero-rated sales.

C. Whether the input taxes being claimed are due or paid.

D. Whether the input taxes being claimed have not been applied against output taxes during and in the succeeding quarters.

E. Whether the input taxes claimed are attributable to zero-rated or effectively zero-rated sales.

F. Whether the claim is filed within two (2) years after the close of the taxable quarter when such sales were made.

The foregoing issues may be simplified into whether or not petitioner is entitled to a refund of the amount of ₱27,729,564.16 allegedly representing its unutilized input VAT attributable to its zero-rated sales for the four quarters of CY 2013.

RULING OF THE COURT

The provisions relevant to the resolution of the present case are Sections 112(A) and (C) of the National Internal Revenue Code of 1997, as amended, which provide:

> "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: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been

duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *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: *Provided, finally*, That for a person making sales that are zero-rated under Section 108 (B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant to the above provisions, in order to be entitled to a refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be satisfied:

1. That the taxpayer is VAT-registered;
2. That there must be zero-rated or effectively zero-rated sales;
3. That input taxes were incurred or paid;
4. That input taxes claimed are attributable to zero-rated or effectively zero-rated sales;
5. That input taxes have not been applied against any output VAT liability; and
6. That the claim was filed within the prescribed periods both in the administrative and judicial levels.

Before delving into the merits of the case, the Court shall first determine the timeliness of the filing of petitioner's administrative and judicial claims for refund.

Based on the above-quoted Section 112(A) of the NIRC of 1997, as amended, the administrative claim for refund of input VAT must be filed within two (2) years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. Thus, petitioner's last day for filing of its administrative claim for the four taxable quarters of CY 2013 fell on the following dates:

Period Covered	**Last day of the Two-year period**
January to March 2013	March 31, 2015
April to June 2013	June 30, 2015
July to September 2013	September 30, 2015
October to December 2013	December 31, 2015

Evidently, petitioner's administrative claim for refund was timely filed on March 26, 2015.

Anent the timeliness of petitioner's judicial claim, Section 112(C) of the NIRC of 1997, as amended, states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the BIR Commissioner to act on the administrative claim for refund or tax credit; and the period of thirty (30) days, which refers to the period for filing a judicial claim with the Court of Tax Appeals.[26]

As to the reckoning of the 120-day period for respondent to act on the refund claim, the pronouncement of the Supreme Court in the case of *Pilipinas Total Gas, Inc. vs Commissioner of Internal Revenue*[27] is instructive, thus:

> "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) 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

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[26] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015.
[27] G.R. No. 207112, December 8, 2015.

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. As it now stands, RMC 54-2014 dated June 11, 2014 mandates that:

> The application for VAT refund/tax credit **must be accompanied by complete supporting documents** as enumerated in Annex 'A' hereof. In addition, the taxpayer shall attach **a statement under oath** attesting to the completeness of the submitted documents (Annex B). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (*i.e.*, at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents. For this purpose, the concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant.

Thus, under the current rule, the reckoning of the 120-day period has been withdrawn from the taxpayer by RMC 54-2014, since it requires him at the time he files his claim to complete his supporting documents and attest that he will no longer submit any other document to prove his claim. Further, the taxpayer is barred from submitting additional documents after he has filed his administrative claim."

Pursuant thereto, for administrative claims filed after June 11, 2014, the rules under Revenue Memorandum Circular (RMC) No. 054-14 shall apply. Accordingly, the 120-day period shall be reckoned from the date the administrative claim was filed and the taxpayer-claimant is required to submit complete supporting documents and a statement under oath attesting to the completeness of the same at the time of filing the claim.

The present claim, having been filed on March 26, 2015, shall be governed by RMC No. 054-14.

Records show that upon the filing of its administrative claim, petitioner submitted the supporting documents, including the affidavit under oath attesting to the completeness of the documents submitted. Accordingly, respondent had 120 days from March 26, 2015 or until July 24, 2015 to decide on the said claim.

As to the thirty (30)-day period to file a judicial claim, the High Court held in the landmark case of *Commissioner of Internal Revenue vs. San Roque Power Corporation*[28] that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty (30) days after the Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within thirty (30) days from the expiration of the 120-day period if the Commissioner does not act within that period.[29]

In this case, even before July 24, 2015, the last day of the 120–day period to act on the claim, respondent rendered a decision denying petitioner's claim for refund as per letter dated June 22, 2015, which was received by petitioner on July 2, 2015[30]. Considering the denial thereof by respondent, petitioner had thirty days from the receipt of the denial on July 2, 2015, or until August 3, 2015[31] within which to file an appeal before this Court. Clearly, petitioner's judicial appeal by way of the instant Petition for Review filed before this Court was also timely filed on July 30, 2015.

It must be noted that even without respondent's decision on petitioner's claim for refund, the Petition for Review was still filed on time. In such case, the thirty-day period to appeal before the Court shall be counted from the lapse of the 120-day period on July 24, 2015. Hence, petitioner had until August 24, 2015[32] within which to file its Petition for Review before this Court. Accordingly, petitioner's judicial claim for refund filed on July 30, 2015 was clearly filed within the prescribed thirty-day period to file a Petition for Review with the Court.

[28] G.R. No. 187485, February 12, 2013.
[29] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.
[30] Exhibit "P-28", Docket, Vol. 3, pp. 1454-1455.
[31] August 1, 2015 being a Saturday.
[32] August 23, 2015 being a Sunday.

The Court shall now determine petitioner's compliance with the remaining requirements for refund of unutilized input VAT.

It is undisputed that petitioner is a VAT-registered entity as evidenced by its Certificate of Registration No. OCN 9RC0000133815 and Taxpayer's Identification No. 005-374-900-000 issued by the BIR, thus, satisfying the first requisite.

Petitioner likewise asserts that its sales of services to Amadeus IT Group, S.A. for the four quarters of CY 2013 qualify as zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended, which reads:

> "SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* –
>
> xxx xxx xxx
>
> (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 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 Bangko Sentral ng Pilipinas (BSP);"

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[33], the Supreme Court held that in order for the sale of service to be zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, the following requisites must be met:

1. the services must be other than processing, manufacturing or repacking of goods;

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

2. the recipient of such services is doing business outside the Philippines; and

3. the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

Petitioner's primary purpose, as stated in its Amended Articles of Incorporation[34], is to market an automated computerized reservations system called the Amadeus Global Travel Distribution, which incorporates a software package that 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 display in the Philippines.

Pursuant to the Amadeus Commercial Organization Agreement[35] entered into by petitioner with its foreign affiliate, Amadeus IT Group, S.A., petitioner shall render services to the latter by marketing, promoting, offering and distributing Amadeus products in the Philippines. Such marketing services do not fall within the same category as "processing, manufacturing or repacking of goods" contemplated by the afore-mentioned provision. Therefore, petitioner satisfied the first requisite.

With regard to the second requisite, petitioner offered as evidence the Articles of Association of Amadeus IT Group, S.A.[36], the Tax Residency Certificate of Amadeus IT Group S.A.[37], and the Certificate of Non-Registration[38] of Amadeus IT Group, S.A. duly issued by the Philippine SEC.

However, petitioner failed to discharge its burden of complying with the second requisite. As held by the Supreme Court in *Accenture, Inc. vs. Commissioner of Internal Revenue*[39]:

> "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.[40]

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[34] Exhibit "P-3", Docket, Vol. 3, pp. 1216-1217.
[35] Exhibit "P-4", Docket, Vol. 3, pp. 1225-1243.
[36] Exhibit "P-6", Docket, Vol. 3, pp. 1245-1267.
[37] Exhibit "P-7", Docket, Vol. 3, pp. 1268-1271.
[38] Exhibit "P-5", Docket, Vol. 3, p. 1244.
[39] G.R. No. 190102, July 11, 2012.
[40] Section 22(I), National Internal Revenue Code of 1997, as amended.

While the submitted documents prove that Amadeus IT Group S.A. is a non-resident foreign corporation organized and established under the laws of Spain, the records reveal 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 non-residents in the amounts of ₱3,336,426.27[41], ₱4,334,702.53[42], and ₱2,779,230.81[43] for the first, second, and third quarters of 2013, respectively, or a total of ₱10,450,359.61. Based on petitioner's Schedule of Purchases of Goods and Services and Corresponding Input VAT for the Period January 1, 2013 to December 31, 2013[44], such input taxes pertain to petitioner's purchases of services from Amadeus IT Group, S.A., which were supported by Monthly Remittance Returns of VAT and Other Percentage Taxes Withheld (BIR Forms No. 1600), detailed as follows:

		Input VAT		
Month	**Name of Supplier**	**Per Schedule (Exh. P-102)**	**Per BIR Form No. 1600**	**Exhibit No.**
January	Amadeus IT Group, S.A.	₱ 937,258.12	₱ 939,308.99	P-102-103-1
February	Amadeus IT Group, S.A.	1,114,561.84	1,114,808.04	P-102-199-1
March	Amadeus IT Group, S.A.	1,284,606.31	1,285,753.44	P-102-343-1
April	Amadeus IT Group, S.A.	1,072,532.79	1,072,532.79	P-102-359-1
May	Amadeus IT Group, S.A.	1,423,231.15	1,425,091.51	P-102-537-1
June	Amadeus IT Group, S.A.	1,838,938.59	1,838,938.59	P-102-615-1
July	Amadeus IT Group, S.A.	1,595,149.32	1,595,149.32	P-102-660-1
August	Amadeus IT Group, S.A.	1,184,081.49	1,184,081.49	P-102-776-1
		₱10,450,359.61	**₱10,455,664.17**	

It is apparent therefrom that the non-resident 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.

Amadeus IT Group, S.A. was made liable to VAT being a non-resident person who, in the course of its trade or business, rendered services in the Philippines. This is in accordance with Section 105 of the NIRC of 1997, as amended, and as implemented by Sections 4.105-1 and 4.105-3 of Revenue Regulations (RR) No. 16-2005, as amended, to wit:

> "SEC. 105. *Persons Liable.* – Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods

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[41] Exhibit "P-14", Line 21L, Docket, Vol. 3, p. 1414.
[42] Exhibit "P-15", Line 21L, Docket, Vol. 3, p. 1416.
[43] Exhibit "P-16", Line 21L, Docket, Vol. 3, p. 1418.
[44] Exhibit "P-102", Docket, Vol. 2, pp. 658-696.

shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

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 nonstock, 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 nonresident foreign persons shall be considered as being course of trade or business**." *(Emphasis supplied)*

"SECTION 4.105-1. *Persons Liable.* – Any person who, in the course of his trade or business, sells, barters, exchanges or leases goods or properties, or renders services, and any person who imports goods, shall be liable to VAT imposed in Secs. 106 to 108 of the Tax Code.

xxx xxx xxx

'Person' refers to any individual, trust, estate, partnership, corporation, joint venture, cooperative or association.

xxx xxx xxx

SECTION 4.105-3. *Meaning of 'In the Course of Trade or Business'.* – xxx

Non-resident persons who perform services in the Philippines are deemed to be making sales in the course of trade or business, even if the performance of services is not regular."

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 second 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.

Petitioner argues that Amadeus IT Group S.A. is not doing business in the Philippines because it is merely collecting royalties from petitioner pursuant to the Distribution Agreement.

The Court finds petitioner's argument unmeritorious. In *Commissioner of Internal Revenue vs. British Overseas Airways Corporation and the Court of Tax Appeals*[45] (hereinafter referred to as "*BOAC* case"), the Supreme Court defined the term "doing business" in this manner:

> "xxx There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a **continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization.** In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character." *(Emphasis supplied)*

Thus, the term "doing business" as contemplated in Section 108(B)(2) of the NIRC of 1997, as amended, and as defined in the *BOAC* case is based on the premise that there is continuity of business activities or dealings.

In this case, the records disclose that the Amadeus Commercial Organization Agreement executed on August 13, 1997 and the Distribution Agreement executed on January 1, 2001, between petitioner and Amadeus IT Group S.A., which were existing for several years already, indicate continuous commercial dealings and manifest Amadeus IT Group S.A.'s intention to pursue its business in the Philippines.

Since petitioner's sales of services to Amadeus IT Group S.A. for the year 2013 do not qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, the alleged input VAT attributable thereto in the amount of ₱27,729,564.16 cannot be refunded.

[45] G.R. No. L-65773-74, April 30, 1987.

Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[46] Moreover, statutes in derogation of sovereignty, such as those containing exemption from taxation, should be strictly construed in favor of the state.[47] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[48]

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

(With Concurring & Dissenting Opinion)
LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

ATTESTATION

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

[46] *Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue*, G.R. No. 154028, July 29, 2005.
[47] *Philippine Long Distance Telephone Company, Inc. vs. City of Davao, et al.*, G.R. No. 143867, March 25, 2003.
[48] *National Power Corporation vs. Province of Isabela*, G.R. No. 165827, June 16, 2006.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

AMADEUS MARKETING PHILIPPINES, INC.,	**CTA CASE NO. 9107**
Petitioner,	Members: **BAUTISTA,** *Chairperson,* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	FEB 06 2018 11:32 a.m.

x---x

CONCURRING & DISSENTING OPINION

BAUTISTA, J.:

With due reverence to the *ponente,* while I agree with the conclusion reached as to the timeliness of the filing of petitioner's administrative and judicial claims for refund, I beg to differ that petitioner's claim for refund cannot be granted because the recipient of petitioner's services, Amadeus IT Group S.A. ("Amadeus IT Group") is doing business within the Philippines, and hence, the services rendered by petitioner in favor of Amadeus IT Group does not qualify as a zero-rated transaction under *Section 108(B)(2)*[1] *of the 1997 National Internal Revenue Code*[2]*, as amended ("1997 NIRC").*

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[1] Sec. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* -

xxx xxx xxx

(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:

xxx xxx xxx

(2) Services other than those mentioned in the preceding paragraph 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 Bangko Sentral ng Pilipinas (BSP);

[2] *Republic Act No. 8424,* as amended.

The *ponente* cites the case of *Accenture, Inc. v. Commissioner of Internal Revenue*[3] *("Accenture")* where the Supreme Court explained that to come within the purview of *Section 108(B)(2) of the 1997 NIRC,* 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 non-resident foreign corporation. A "non-resident foreign corporation," according to the *ponencia,* refers to a foreign corporation not engaged in trade or business within the Philippines. Since based on the Schedule of Purchases of Goods and Services and Corresponding Input VAT for the Period January 1, 2013 to December 31, 2013, and the Monthly Remittance Returns of VAT and Other Percentage Taxes Withheld (BIR Forms No. 1600), Amadeus IT Group also renders services to petitioner, the *ponente* concluded that petitioner failed to comply with the second requisite to qualify for VAT zero-rating, *i.e.,* the recipient of such services is doing business outside the Philippines.

I beg to differ with my respected colleague's conclusion, and humbly submit that what law and jurisprudence merely requires, among others, is that the recipient of the zero-rated service must be conducting business outside the Philippines. There is no qualification that such act of doing business is done *solely* outside the Philippines. As long as the service-recipient is able to present proof that it is conducting business outside the Philippines when the services were performed, even if it is also doing business in the Philippines, the service provider remains entitled to vat zero-rating under *Section 108(B)(2) of the 1997 NIRC.*

The Supreme Court's ruling in *CIR v. American Express International Inc. ("American Express")*[4] may find application in the present case. In the *American Express* case, the Supreme Court did not deprive the Philippine taxpayer of its input VAT on the zero-rated service it performed in favor of the foreign affiliate notwithstanding that said foreign affiliate may have also rendered services in favor of such Philippine taxpayer. The Supreme Court merely focused on the fact that the Philippine entity rendered services in favor of its foreign affiliate, which was paid for in acceptable foreign currency and accounted for in conformity with law. The Supreme Court discussed, as follows:

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[3] G.R. No. 190102, July 11, 2012, 676 SCRA 325.
[4] G.R. No. 152609, June 29, 2005, 462 SCRA 197.

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Zero Rating of
"Other" Services

The law is very clear. Under the last paragraph quoted above, services performed by VAT-registered persons in the Philippines (other than the processing, manufacturing or repacking of goods for persons doing business outside the Philippines), when paid in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP, are zero-rated.

Respondent is a VAT-registered person that facilitates the collection and payment of receivables belonging to its non-resident foreign client, for which it gets paid in acceptable foreign currency inwardly remitted and accounted for in conformity with BSP rules and regulations. Certainly, the service it renders in the Philippines is not in the same category as "processing, manufacturing or repacking of goods" and should, therefore, be zero-rated. In reply to a query of respondent, the BIR opined in VAT Ruling No. 080-89 that the income respondent earned from its parent company's regional operating centers (ROCs) was automatically zero-rated effective January 1, 1988.

Service has been defined as "the art of doing something useful for a person or company for a fee" or "useful labor or work rendered or to be rendered by one person to another." For facilitating in the Philippines the collection and payment of receivables belonging to its Hong Kong-based foreign client, and getting paid for it in duly accounted acceptable foreign currency, respondent renders service falling under the category of zero rating. Pursuant to the Tax Code, a VAT of zero percent should, therefore, be levied upon the supply of that service.

Branch and Home Office

By designation alone, respondent and the ROCs are operated as branches. This means that each of them is a unit, "an offshoot, lateral extension, or division" located at some distance from the home office of the parent company; carrying separate inventories; incurring their own expenses; and generating their respective incomes. Each may conduct sales operations in any locality as an extension of the principal office.

The extent of accounting activity at any of these branches depends upon company policy, but the financial reports of the entire business enterprise – the credit card company to which they all belong – must always show its financial position, results of operation, and changes in its financial position as a single unit. Reciprocal accounts are reconciled or eliminated, because they lose all significance when the branches and home office are viewed as a single entity. In like manner, intra-company profits or losses must be offset against each other for accounting purposes.

Contrary to petitioner's assertion, respondent can sell its services to another branch of the same parent company. In fact, the business concept of a transfer price allows goods and services to be sold between and among intra-company units at cost or above cost. A branch may be operated as a revenue center, cost center, profit center or investment center, depending upon the policies and accounting system of its parent company. Furthermore, the latter may choose not to make any sale itself, but merely to function as a control center, where most or all of its expenses are allocated to any of its branches.

Gratia argumenti that the sending of drafts and bills by service establishments to respondent is equivalent to the act of sending them directly to its parent company abroad, and that the parent company's subsequent redemption of these drafts and billings of credit card holders is also attributable to respondent, then with greater reason should the service rendered by respondent be zero-rated under our VAT system. The service partakes of the nature of export sales as applied to goods, especially when rendered in the Philippines by a VAT-registered person that gets paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations.

Services Subject to
Zero VAT

As a general rule, the VAT system uses the destination principle as a basis for the jurisdictional reach of the tax. Goods and services are taxed only in the country where they are consumed. Thus, exports are zero-rated, while imports are taxed.

Confusion in zero rating arises because petitioner equates the performance of a particular type of service with the consumption of its output abroad. In the present case, the facilitation of the collection of receivables is different from the utilization or consumption of the outcome of such service. While the facilitation is done in the Philippines, the consumption is not. Respondent renders assistance to its foreign clients — the ROCs outside the country — by receiving the bills of service establishments located here in the country and forwarding them to the ROCs abroad. The consumption contemplated by law, contrary to petitioner's administrative interpretation, does not imply that the service be done abroad in order to be zero-rated.

Consumption is "the use of a thing in a way that thereby exhausts it." Applied to services, the term means the performance or "successful completion of a contractual duty, usually resulting in the performer's release from any past or future liability . . ." The services rendered by respondent are performed or successfully completed upon its sending to its foreign client the drafts and bills it has gathered from service establishments here. Its services, having been performed in the Philippines, are therefore also consumed in the Philippines.

Unlike goods, services cannot be physically used in or bound for a specific place when their destination is determined. Instead, there can only be a "predetermined end of a course" when determining the service "location or position . . . for legal purposes." Respondent's facilitation service has no physical existence, yet takes place upon rendition, and therefore upon consumption, in the Philippines. Under the destination principle, as petitioner asserts, such service is subject to VAT at the rate of 10 percent.

Respondent's Services Exempt
from the Destination Principle

However, the law clearly provides for an exception to the destination principle; that is, for a zero percent VAT rate for services that are performed in the Philippines, "paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the [BSP]." Thus, for the supply of service to be zero-rated as an exception, the law merely requires that first, the service be performed in the Philippines; second, the service fall under any of the categories in Section 102(b) of the Tax Code; and, third, it be paid in acceptable foreign currency accounted for in accordance with BSP rules and regulations.

Indeed, these three requirements for exemption from

> the destination principle are met by respondent. Its facilitation service is performed in the Philippines. It falls under the second category found in Section 102(b) of the Tax Code, because it is a service other than "processing, manufacturing or repacking of goods" as mentioned in the provision. Undisputed is the fact that such service meets the statutory condition that it be paid in acceptable foreign currency duly accounted for in accordance with BSP rules. Thus, it should be zero-rated.
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> xxx xxx xxx
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> Tax Situs of a
> Zero-Rated Service
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> <u>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</u>. <u>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</u>. The place of payment is immaterial; much less is the place where the output of the service will be further or ultimately used.[5]

Applying the above, it becomes illogical to think that petitioner's act of withholding payments to Amadeus IT Group is an indication of continuity of commercial dealings, thereby removing the services rendered by petitioner from the purview of a zero-rated sale. To emphasize, it is not the continuity of commercial dealings or whether the foreign entity/service recipient is a non-resident foreign corporation, as defined under the income tax provisions of the *1997 NIRC*, that determines whether the services rendered by a Philippine taxpayer in favor of such foreign entity qualifies as a zero-rated transaction, but whether such service is rendered in favor of a foreign entity conducting business outside the Philippines.

Reliance on the *Accenture* case should also be made carefully because the issue involved in that case is whether Accenture, Inc., the service provider, has successfully proven that its clients are entities doing business outside the Philippines. According to the Supreme Court, while the evidence presented by Accenture, Inc. may have established that its clients are foreign, this fact does not automatically

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[5] Underscoring ours.

mean that these clients were doing business outside the Philippines. However, there is no specific finding that just because the foreign clients are doing business in the Philippines, the service provider is automatically removed from the entitlement of vat zero-rating.

In the instant case, petitioner offered as evidence the Articles of Association of Amadeus IT Group, S.A., the Tax Residency Certificate 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. To my mind, and as ruled upon by the Court *En Banc* in various cases[6], these are sufficient proof that the services rendered to Amadeus IT Group fall within the entitlement of a VAT refund for services rendered in favor of entities engaged in business conducted outside the Philippines.

Accordingly, I humbly submit that the Supreme Court's pronouncement in the *Accenture* case that the foreign entity must be a non-resident foreign corporation as defined under *Section 22(I)*[7] *of the 1997 NIRC* may be considered as a mere *obiter dictum*. In fact, the definition under said *Section 22(I) of the 1997 NIRC* cannot be made to apply to VAT because the same pertains to "Income Tax."

At this juncture, I wish to restate my view that the requirement is complied with as long the service recipient is conducting business outside the Philippines. My Concurring and Dissenting Opinion in *Amadeus Marketing Philippines, Inc. v. Commissioner of Internal Revenue*[8] is quoted hereunder:

> Furthermore, if it were an additional requirement for claiming a VAT refund that the foreign entity does not engage in business in the Philippines, each Philippine taxpayer seeking to claim a VAT refund for zero-rated sales would be required to verify that each foreign entity it renders services in favor of does not conduct business in the Philippines. How

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[6] *CIR v. Deutsche Knowledge Services Pte. Ltd.*, CTA *EB* Nos. 1297 & 1302 (CTA Case No. 8165), May 18, 2017; *General Motors Automobiles Philippines, Inc. v. CIR*, CTA Case No. 8976, May 2, 2017; *Manulife Data Services, Inc. v. CIR*, CTA Case Nos. 8482, 8513, 8560 & 8611, April 19, 2017; *Chartis Technology & Operations Management Corp. (Philippines) v. CIR*, CTA Case Nos. 8432, 8498, 8534 & 8581, February 22, 2017.

[7] Sec. 22. *Definitions*. – When used in this Title:

xxx xxx xxx

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

[8] CTA *EB* Case No. 1483, October 9, 2017.

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then will that be done? A verification will first be made with the Bureau of Internal Revenue whether a foreign entity/service recipient also receives services from other Philippine entities? An absurd situation will arise when all the law requires is that the service be rendered in favor of an entity engaged in business outside the Philippines.

Finally, it is not unusual then for a Philippine entity to render services in favor of its foreign affiliate and vice versa. This "exchange of services" does not take away from the Philippine entity its entitlement to zero-rating precisely because the law merely requires that the Philippine entity's services be rendered in favor of an entity conducting business outside the Philippines.

To conclude, law and jurisprudence merely require that the service, to qualify for zero-rating, be rendered in favor of an entity conducting business outside the Philippines. As consistently held by the Court, this requirement is complied with when the Philippine taxpayer/service provider presents at least both a consularized incorporation documents and an SEC negative certification for each foreign entity/service recipient. Assuming the other requirements for claiming a refund of unutilized input VAT arising from zero-rated sales are present, the taxpayer is entitled to the same.

In view of the foregoing discussion, I vote to **GRANT** the Petition for Review seeking the refund for unutilized input VAT attributable to zero-rated sales for the four (4) quarters of calendar year 2013.

LOVELL R. BAUTISTA
Associate Justice