REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

MSCI HONG KONG LIMITED,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9661

Members:

DEL ROSARIO, *PJ, Chairperson*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:
FEB 26 2020 : 1:17 p.m.

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RESOLUTION

Fabon-Victorino, J.:

Assailed in respondent's Motion for Partial Reconsideration dated November 4, 2019 is the Decision dated October 14, 2019, the *fallo* of which reads:

> **WHEREFORE**, the instant Petition for Review filed by petitioner MSCI Hong Kong Limited, is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **DIRECTED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner MSCI Hong Kong Limited in the reduced amount of ₱6,297,480.35, representing its unutilized and excess input VAT attributable to its zero-rated sales for the four (4) quarters of calendar year 2015.
>
> **SO ORDERED**.

Respondent argues that to confer zero-rating for the services rendered under Section 108(B)(2) of the National Internal Revenue Code (NIRC), as amended, the recipient thereof must be a non-resident foreign corporation, or a foreign entity not doing business in the Philippines. Since petitioner is a branch of its client, MSCI, Inc., the latter is deemed to be doing business in the Philippines when it received the services rendered to it in Philippine territory by petitioner. Given that petitioner's client MSCI, Inc. is doing business in the Philippines, the services it rendered to MSCI, Inc. failed to qualify for zero-rating under Section 108(B)(2) of the NIRC, as amended. Without zero-rated sales of services by petitioner, the subject input VAT refund claim hinged thereon must be rejected.

In refutation,[1] petitioner posits that evidence reveals that the foreign entity to whom it rendered services, specifically, MSCI, Inc. is not its parent company, but merely its affiliate company. They are separate and distinct entities, thus, the services it rendered to it in the Philippines may not be deemed as services performed by MSCI, Inc. And since its client MSCI, Inc. is a foreign entity not doing business in the Philippines, the services it rendered in favour of MSCI, Inc. qualify for zero-rating under Section 108(B)(2) of the NIRC, as amended.

The Motion should be denied.

In *Accenture, Inc. vs. Commissioner of Internal Revenue,*[2] the Supreme Court eloquently ruled that for zero-rated service pivoted upon Section 108(B)(2) of the NIRC, as amended, to prosper, it must be established by definite proof that the recipient of such services be a foreign entity not doing business in the Philippines.

The record shows that petitioner's parent company is MSCI Hong Kong Limited, and *not* MSCI, Inc.[3] In other words, petitioner is the Philippine *branch* of MSCI Hong Kong Limited and *not* of MSCI, Inc., as erroneously perceived by respondent. Since petitioner and MSCI, Inc. are juridical entities, with separate and distinct legal personality, the principle of single entity concept by a branch and its parent

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[1] Petitioner's Comment (Re: Respondent's Motion for Partial Reconsideration dated November 4, 2019).
[2] G.R. No. 190102, July 11, 2012.
[3] Exhibit P-2-1.

company invoked by respondent finds no application in the given case.

Having convincingly established by ample proof that the recipient of petitioner's services MSCI, Inc. is a foreign entity[4] not doing business in the Philippines,[5] it stands to reason that former's services to the latter is subject to zero-rating on the strength of Section 108(B)(2) of the NIRC, as amended.

WHEREFORE, respondent's Motion for Partial Reconsideration dated November 4, 2019 is **DENIED**. The assailed Decision dated October 14, 2019 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We concur:

ROMAN G. DEL ROSARIO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

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[4] Third Amended and Restated Certificate of Incorporation of MSCI, Inc., Amended and Restated By-laws of MSCI, Inc., and Certification of the United States Internal Revenue Service dated February 22, 2016, attesting that MSCI, Inc. is a US Corporation and a US resident for purposes of taxation. See Exhibits P-6 to P-8.

[5] Certificate of Non-Registration issued by the Securities and Exchange Commission, acknowledging MSCI, Inc. as a corporate entity not registered in the Philippines. See Exhibit P-10.