REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AIG SHARED SERVICES CORPORATION (PHILIPPINES),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9879

Members:

BACORRO-VILLENA, *Chairperson,*
CUI-DAVID, *JJ.*

Promulgated: JUL 21 2022 4:13 PM

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner AIG Shared Services Corporation (Philippines)'s (**petitioner**'s) "Omnibus Motion 1. For Partial Reconsideration of Decision dated October 26, 2021 2. For New Trial"[1] (**Omnibus Motion**) filed on 01 December 2021, without comment[2] from respondent Commissioner of Internal Revenue (**respondent**). The Omnibus Motion assails the Court's Decision promulgated on 26 October 2021[3] (**assailed Decision**). The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, the present Petition for Review filed by petitioner AIG Shared Services Corporation (Philippines) on 23 July 2018 is hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue, is

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1 Division Docket, Volume IV, pp. 1852-1862.
2 *Per* Records Verification dated 08 March 2022, id., p. 1871.
3 Id., pp. 1798-1851.

hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of ₱12,812,480.60, representing unutilized excess input value-added tax (VAT) attributable to its zero-rated sales for the four (4) quarters of taxable year ended 31 December 2016.

SO ORDERED.

...

In the said Omnibus Motion, petitioner moves for partial reconsideration of the assailed Decision insofar as it disallowed the amount of ₱1,267,270.08 on the ground that the relevant withholding value-added tax (**WVAT**) return was filed in 2017 or outside the period of claim.

According to petitioner, since the act of withholding was made in December 2016 and within the period of claim, the said amount should not have been disallowed considering that the subject return was nevertheless filed on time pursuant to Section 4.114-2[4] of Revenue Regulations (**RR**) No. 16-2005[5], as amended.

Furthermore, petitioner moves for a new trial as regards the Court's decision to not accord non-resident foreign corporation (**NRFC**) status to twenty-one (21) of petitioner's foreign clients as the pertinent Securities and Exchange Commission (**SEC**) certifications of non-registration offered in evidence do not entirely cover the subject period of claim.

In support thereof, petitioner submitted a copy of its letter to the SEC dated 29 November 2021[6] requesting for the issuance of certifications of non-registration to be submitted anew to the Court.

Corollary, petitioner claims that it has complied with the requisites of a new trial as laid down in *Manuel Ybiernas, et al. v. Ester Tanco-Gabaldon, et al.*[7] as follows:

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4 **SEC. 4.114-2.** *Withholding of VAT on Government Money Payments and Payments to Non-Residents.* —

...

5 Consolidated Value-Added Tax Regulations of 2005.

6 Division Docket, Volume IV, pp. 1863-1865.

7 G.R. No. 178925, 01 June 2011.

First, it was only after the trial that petitioner discovered the requirement that the certifications of non-registration must have been issued after the date of sale to the NRFC.

Second, the documents to be presented could not have been discovered and produced at the trial since jurisprudence and regulations at that time only required the submission of original copy of such certification without any qualification.

Third, the certifications to be secured are material and with such weight as to change the judgment considering that the lack thereof resulted in the disallowance of ₱1,147,651,048.89 in zero-rated sales.

Petitioner thus implores the Court to exercise its avowed policy to liberally apply its rules of procedure not only to promote the objective of securing a just, speedy and inexpensive determination of every action and proceeding but also to effectively honor the Government's sovereign commitment to taxpayers that they can avail of promised tax reliefs and incentives in the course of their business in the Philippines.

We resolve.

After a thorough consideration of the points raised by petitioner, We find no merit in the Omnibus Motion.

PETITIONER'S MOTION FOR PARTIAL RECONSIDERATION

In seeking partial reconsideration, petitioner claims that the input taxes on services rendered by non-residents should not be disallowed because the same were nevertheless withheld during the period of claim despite the fact that the return therefor was filed beyond such period. Petitioner adds that the subject return was filed on time on 09 January 2017 or within ten (10) days from following the end of the month of withholding.

We do not agree.

x - x

Section 4.114-2(b) of RR No. 16-2005[8], as amended, is rather clear in providing that VAT withheld and paid for the non-resident recipient may be claimed as input tax by the withholding agent **upon filing his own VAT Return**, to wit:

> ...
>
> **SEC. 4.114-2.** *Withholding of VAT on Government Money Payments and Payments to Non-Residents. —*
>
> ...
>
> (b) The government or any of its political subdivisions, instrumentalities or agencies, including GOCCs, as well as private corporations, individuals, estates and trusts, whether large or non-large taxpayers, shall withhold twelve percent (12%) VAT, starting February 1, 2006, with respect to the following payments:
>
> (1) Lease or use of properties or property rights owned by non-residents;
>
> **(2) Other services rendered in the Philippines by non-residents.**
>
> In remitting VAT withheld, the withholding agent shall use BIR Form No. 1600 - Remittance Return of VAT and Other Percentage Taxes Withheld.
>
> **VAT <u>withheld</u> and <u>paid</u> for the non-resident recipient (remitted using BIR Form No. 1600)**, which VAT is passed on to the resident withholding agent by the non-resident recipient of the income, **<u>may be claimed as input tax</u> by said VAT-registered withholding agent <u>upon filing his own VAT Return</u>**, subject to the rule on allocation of input tax among taxable sales, zero-rated sales and exempt sales. **The duly filed BIR Form No. 1600 is the proof or documentary substantiation for the claimed input tax or input VAT.**[9]
>
> ...

As the subject Bureau of Internal Revenue (**BIR**) Form No. 1600 was filed and the taxes therefor were remitted on 09 January 2017, which is outside the period of claim, the Court could only deem that the disallowance to be proper.

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8 Supra at note 5.

9 Emphasis and underscoring supplied.

PETITIONER'S MOTION FOR A NEW TRIAL

In the same manner, We find no cogent reason to grant petitioner's motion for a new trial and reopen the case for presentation of additional evidence as petitioner failed to raise any compelling reason that would justify the same. Petitioner's plea for it to be allowed to submit the SEC Certifications of Non-Registration to be secured anew is *not* an exceptional circumstance. Rather, the certifications sought to be presented are to be deemed "forgotten evidence". In *Office of the Ombudsman, Represented by Hon. Simeon V. Marcelo v. Carmencita D. Coronel*[10], the Supreme Court ruled as follows:

> ...
>
> As it is, the additional evidence offered by Coronel amount to no more than "forgotten" evidence, the belated uncovering of which would not have justified a reconsideration of the case. **Forgotten evidence refers to evidence already in existence or available before or during a trial; known to and obtainable by the party offering it; and could have been presented and offered in a seasonable manner, were it not for the sheer oversight or forgetfulness of the party or the counsel.** Presentation of forgotten evidence is disallowed, because it results in a piecemeal presentation of evidence, a procedure that is not in accord with orderly justice and serves only to delay the proceedings. A contrary ruling may open the floodgates to an endless review of decisions, whether through a motion for reconsideration or for a new trial, in the guise of newly discovered evidence.
>
> ...

Here, petitioner is well-aware of the period subject of its claim for refund, i.e., is 01 January 2016 to 31 December 2016. Despite this, petitioner presented SEC certifications that do not fully cover the subject period. Thus, it cannot be said that petitioner only discovered after the trial the requirement that such certification must cover the entire period of claim.

In addition, We cannot lend credence to petitioner's contention that the new certifications to be submitted could not have been discovered and produced at the trial since jurisprudence and regulations at that time only required the submission of original copy of such certification without any qualification.

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[10] G.R. No. 164460, 27 June 2006; Citations omitted, emphasis supplied.

Assuming for the sake of argument that the petitioner is indeed unaware that the certification of non-registration must have been issued after the date of sale to the NRFC, petitioner is nevertheless expected to submit documents pertinent or relevant to a particular period. Certainly, it would be odd to simply require petitioner to submit the SEC certifications without any reference to the period to which they pertain, as it is possible that the subject corporations may be subsequently registered here in the Philippines after securing such certification. In this case, however, even in this respect, petitioner has failed to submit said document.

Moreover, being unaware of the rules and regulations pertinent to its claims is not a compelling reason that should excuse its non-compliance. In *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*[11], the Supreme Court likewise ruled that:

> ...
> Besides, litigation is not a "trial and error" proceeding. A party who moves for a new trial on the ground of mistake must show that ordinary prudence could not have guarded against it. A new trial is not a refuge for the obstinate. Ordinary prudence in these cases would have dictated the presentation of all available evidence that would have supported the claims for refund/credit of input VAT of petitioner corporation...
> ...

WHEREFORE, in view of the foregoing, petitioner AIG Shared Services Corporation (Philippines)'s "Omnibus Motion 1. For Partial Reconsideration of Decision dated October 26, 2021 2. For New Trial" filed on 01 December 2021 is hereby **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

[11] G.R. Nos. 141104 & 148763, 08 June 2007; Citation omitted.

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I CONCUR:

LANEE S. CUI-DAVID
Associate Justice