REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

OFFSOURCING PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 10257

Present:

RINGPIS-LIBAN, *P.J. and Chairperson*
MODESTO-SAN PEDRO, *and,*
FERRER-FLORES, *JJ.*

Promulgated:

3:50 PM

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RESOLUTION

RINGPIS-LIBAN, ***P.J.:***

On July 5, 2024, the Court issued a decision which **DENIED** the taxpayer's petition for lack of jurisdiction, on the ground that the taxpayer failed to timely file the judicial claim for Value-Added Tax (VAT) refund.[1]

The taxpayer filed a *Motion for Reconsideration (Re: Decision on the Petition for Review dated 05 July 2024)* on July 26, 2024, with an *Opposition (Re: Motion for Reconsideration of the Decision dated 5 July 2024)* from the Commissioner of Internal Revenue (CIR) filed on August 12, 2024.

A draft *Amended Decision* penned by Justice Modesto-San Pedro was circulated among the members of the Court for deliberation on December 23, 2025. However, since the two members of the Court voted against the position in the draft *Amended Decision,* it became the minority opinion. The case was subsequently re-raffled to the undersigned for the writing of the majority view.

[1] The Decision, penned by Justice Modesto-San Pedro, was promulgated with the concurrence of Justice Ferrer-Flores. The undersigned was *on leave*.

The Court **DENIES** the motion for lack of merit.

During the deliberations, I concurred with the *ponencia* of Justice Modesto-San Pedro on the point that Section 112(C) of the National Internal Revenue Code of 1997 (Tax Code) was amended by Republic Act No. (RA) 10963 or the Tax Reform for Acceleration and Inclusion (TRAIN) Law when the later law removed the "deemed denied" provision of the Tax Code.

However, the amendment which resulted in such removal *in the Tax Code* did *not* leave the taxpayer without any remedy in cases of *inaction* by the Commissioner of Internal Revenue (CIR). This is precisely because the Court of Tax Appeals (CTA) charter, specifically of Sections 7(a)(2)[2] and 11[3] of RA 1125, as amended by RA 9282, both of which predate RA 10963, *remained unchanged.*

In other words, despite the deletion in the text of Section 112(C),[4] the organic law of the CTA has *preserved* the taxpayer's option to appeal the *unacted claim* with the CTA.[5]

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2 "Sec. 7. Jurisdiction. - The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

xxx xxx xxx

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial[.]"

3 "SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts <u>may file an appeal with the CTA within thirty (30) days</u> after the receipt of such decision or ruling or <u>after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein</u>.

xxx xxx xxx" (*Underscoring supplied*)

4 (C) *Period within which Refund of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund for creditable input taxes within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of the application filed in accordance with Subsections (A) and (B) hereof: *Provided,* That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.

In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: *Provided, however,* That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

5 The original and relevant text of Section 112 of the Tax Code when it took effect on January 1, 1998 reads:

"Sec. 112 (D). 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

The Tax Code, as amended by the TRAIN Law, *cannot be read in isolation but must be harmonized* with RA 1125, as amended. "Statutes are in *pari materia* when they relate to the same person or thing or to the same class of persons or things, or object, or cover the same specific or particular subject matter. It is axiomatic in statutory construction that a statute must be interpreted, not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. The rule is expressed in the maxim, '*interpretare et concordare legibus est optimus interpretandi*,' or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence."[6]

RA 1125, as amended, clearly states that the CTA has jurisdiction over the *inaction* of the CIR on refunds of internal revenue taxes. This underscores the "deemed denied" principle, especially where the Tax Code, even after the TRAIN amendment, still gives the CIR a specific period to act and, in fact, penalizes the inaction. Considering that Section 112(C), as amended by the TRAIN Law, commands the CIR to act on the claim "within ninety (90) days from the date of submission", the CIR's *inaction* during said period should be *deemed* a decision of denial, which can then be elevated to the CTA.

This doctrine was upheld in the landmark case decided by the Supreme Court *En Banc* in *Commissioner of Internal Revenue v. San Roque Power Corporation*,[7] and has been the prevailing jurisprudence ever since.[8]

Moreover, the deletion of the phrase "or after the expiration of the 120-day [now 90-day] period, whichever is sooner" in the TRAIN Law could *not* have

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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 Subsections (A) and (B) 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." (*Underscoring supplied*)

6 *La Suerte Cigar and Cigarette Factory v. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 125346, November 11, 2014.

7 G.R. Nos. 187485, 196113 and 197156, February 12, 2013.

8 *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*, G.R. No. 191498, January 15, 2014; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, G.R. No. 168950, January 14, 2015; *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 182737, March 02, 2016; *Aichi Forging Company of Asia, Inc. v. Court of Tax Appeals - En Banc, Et. Al.*, G.R. No. 193625, August 30, 2017; *Steag State Power, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205282 (Resolution), January 14, 2019; *Energy Development Corp. v. Commissioner of Internal Revenue*, G.R. No. 203367, March 17, 2021.

resulted in a *lacuna* where the taxpayer is left with no procedural remedy, unlike the previous version of the same provision.[9]

Justice must protect the interests of both the government and the taxpayer alike. Congress could *not* have intended for a taxpayer who has filed an administrative claim for refund to be left at the mercy of the government, forced to wait *indefinitely* for the CIR to act, without any available judicial recourse.

Even with the judicial recourse available to the taxpayer, its petition should still be **DENIED** for lack of merit.

The Court adopts the position of Justice Modesto-San Pedro with respect to the merits of the judicial claim. The Court finds that *although* the taxpayer was VAT-registered and its administrative and judicial claims were timely filed, *nonetheless*, it *failed* to establish that it was engaged in zero-rated or effectively zero-rated sales for the period of the claim.

Specifically, to qualify for VAT zero-rating under Section 108(B)(2) of the Tax Code, the following are required:

a. The sale should cover services, not goods;

b. The services should be rendered in the Philippines;

c. The services should be rendered in favor of persons engaged in business conducted outside the Philippines, by non-resident foreign corporation (NRFC) or to a non-resident person not engaged in business who is outside the Philippines when the services were performed; and,

d. The payment or consideration for the sale was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP).

To determine the nature of the sale, whether it is indeed a sale of service, the evidence to be presented is the *Service Agreement* between the claimant and the NRFC. A *Service Agreement* will show the place where the service to the NRFC will be performed, i.e., if it is in fact in the Philippines as required by Section 108(B)(2). The taxpayer failed to present the same.

In the ICPA Report, the ICPA himself noted that the taxpayer failed to present any *Service Agreement* it entered into with its NRFC clients: "[a]s part of the audit procedures, to ascertain the nature of services provided as well as the fees paid for the services rendered by the Petitioner to Offsourcing Inc., copies of the billing statements and/or invoices together with any Service Agreement between the Petitioner and Offsourcing Inc. have not been provided for review

9 Please refer to the table which compare the relevant provisions of the Tax Code in the *Amended Decision / Dissenting Opinion.*

as of report date." Moreover, the *Formal Offer of Evidence* filed by the taxpayer confirms that it did not offer as evidence any Service Agreement.

ACCORDINGLY, premises considered, the taxpayer's *Motion for Reconsideration (Re: Decision on the Petition for Review dated 05 July 2024)* is **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Presiding Justice

WE CONCUR:

W/ due respect, pls see DO

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CORAZON G. FERRER-FLORES
Associate Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Special Second Division

OFFSOURCING PHILIPPINES, INC.,	**CTA CASE NO. 10257**
Petitioner,	Present:
-versus-	**RINGPIS-LIBAN,** *P.J., Chairperson,* **MODESTO-SAN PEDRO,** *and* **FERRER-FLORES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	Promulgated:
Respondent.	3:50 pm

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DISSENTING OPINION

MODESTO-SAN PEDRO, J.:

With all due respect to my esteemed colleague, Presiding Justice Ma. Belen M. Ringpis-Liban, I disagree with the denial of the instant Motion for Reconsideration ("MR"). I admittedly penned the Decision, dated July 5, 2024, which petitioner assails through its MR. However, upon reviewing the issues involved, it is now my opinion that the Petition for Review at bar should, instead of being dismissed for lack of jurisdiction, be denied for lack of merit.

Under TRAIN, the Commissioner's inaction could not be deemed a denial

The issue on jurisdiction mostly stems from a single provision: the second paragraph of *Section 112(c) of the NIRC*. It arises specifically from the various versions of the provision produced by relatively recent amendments to the *NIRC*. Particularly relevant here are the amendments made by *TRAIN* and *EOPTA*.

The three relevant versions of the paragraph are quoted below:

NIRC	*TRAIN*	*EOPTA*
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 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.	In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent or employee of the Bureau of Internal Revenue to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.	In case of full or partial denial of the claim for tax refund, 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 ninety (90)-day period, appeal the decision with the Court of Tax Appeals: Provided, however, That failure on the part of any official, agent, or employee of the Bureau of Internal Revenue to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code.

Significantly, *TRAIN* removed (i) the phrase "or the failure on the part of the Commissioner of Internal Revenue ("CIR") to act on the application within the period prescribed above" as a condition for raising an appeal to this Court; and (ii) the phrase "or after the expiration of the one hundred twenty day-period" as a reckoning point for the 30-day period for filing such an appeal. It instead added a new provision instituting administrative punishment for such failures to act on claims for refund. *EOPTA*, meanwhile, reinserted the deleted phrases into the provision, while retaining the part about administrative punishment.

An amendment to a law that removes certain provisions must be treated as important. Drawing from the book *Statutory Construction* by Ruben E. Agpalo, the Supreme Court has decreed that "the deliberate selection of language differing from that of the earlier act on the subject indicates that a change in the meaning of the law was intended"[1] and that an amendment to a statute should not be treated as "mere semantic exercise" but must instead be seen as expressing some purpose, which must be given effect.[2] In other words, a change made to the language used in a law must be understood as a change in the law itself.

To be even more specific, the High Court has held that "an amendment by the deletion of certain words or phrases indicates an intention to change its meaning."[3] Clearly, then, the removal of a course of action previously provided by law must be understood as the law being modified to no longer allow such.

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1 *Oceanmarine Resources Corporation v. Nedic*, G.R. No. 236263, July 19, 2022.
2 *Akbayan v. Commission on Elections*, G.R. Nos. 147066 & 147179, March 26, 2001.
3 *Republic of the Philippines v. St. Vincent de Paul Colleges, Inc.*, G.R. No. 192908, August 22, 2012, citing *Laguna Metts Corporation v. Court of Appeals*, G.R. No. 185220 (Resolution), July 27, 2009.

Furthermore, "when there is a reasonable certainty that a particular person, object, or thing has been omitted from a legislative enumeration," such omission must be taken as intentional.[4] The provision in question must consequently be treated as inapplicable to the entity omitted from the enumeration.

Finally, as often emphasized, when the laws do not distinguish, neither should the Courts.[5]

Considering the above, *TRAIN*'s explicit removal of the CIR's inaction as either a condition of raising an appeal or the reckoning point of the 30-day prescriptive period cannot be brushed aside. To treat the old option, of raising a judicial claim for refund from the CIR's inaction, as still available even after said removal would be to treat *TRAIN*'s amendments to *Section 112(c)* as meaningless, effectively nullifying said changes. It would conflict with the explicit deletion of said option from the *NIRC*. It would ignore the provision's telling omission of appeals from inaction. It would distinguish (between cases where the CIR does and does not act on an administrative claim within the 90-day period) when the law does not. It would thus contradict the law itself.

This is further supported by the fact that the contentious passages were reinserted by *EOPTA*. Had legislators intended for the "deemed denied" provision to simply by treated as included in *TRAIN*, then there would be no need to explicitly reinclude it in the *NIRC* through *EOPTA*. Why would they need to add a provision if it was already considered as included in the law, after all? This reinsertion only makes sense if inactions from the CIR on refund claims for input taxes were *not* appealable to this Court under *TRAIN*. As such, treating such inaction as appealable both ignores the clear amendments made by *TRAIN* and the specific changes enacted by *EOPTA*.

Indeed, a review of the minutes of the consultative meetings for *EOPTA* clearly reveal that legislators fully intended to deprecate the "deemed denied" provision through the amendments made by *TRAIN*, as discussed at length in *Citco International Support Services Limited – Philippines ROHQ v. Commissioner of Internal Revenue*.[6]

I am not unaware that statutory construction frowns upon repeals by implication, as stated in *The United Harbor Pilots' Association of the Philippines, Inc. v. Association of International Shipping Laws, Inc.*[7] However, repeals by implication are accepted when "it is manifest that the legislative authority so intended" such repeal. And as discussed above, deletions and omissions from legislative enumerations must be understood as

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4 *Maibarara Geothermal, Inc. v. Commissioner of Internal Revenue*, G.R. No. 256720, August 7, 2024.

5 See, for example, *Philippine Contractors Accreditation Board v. Central Mindanao Construction Multi-Purpose Cooperative*, G.R. No. 242296, July 31, 2024.

6 CTA EB Case No. 2900, August 7, 2025.

7 G.R. No. 133763, November 12, 2002.

expressions of intent to leave out what was deleted or omitted. The deletion and omission of the "deemed denied" provision from *Section 112(c) of the NIRC* by *TRAIN* must therefore be treated as intentional and thus as an *exception* to the general rule against repeals by implication.

Neither can *Sections 7(a)(2) & 11 of Republic Act No. 1125, as amended* ("*CTA Law*"), as cited by the majority opinion, overturn this deletion. These provisions constitute a *general* provision as they cover not just "refunds of internal revenue taxes, fees, or other charges" but also disputed assessments, penalties, and other matters arising from the *NIRC* and other laws administered by the Bureau of Internal Revenue. Their scope is thus broad. Compare this to *Section 112(c) of the NIRC*, as specifically amended by *TRAIN*, which *exclusively* covers claims for refund or tax credit for input taxes *only*. It governs a *specific* power of the CIR (to grant refunds and tax credits) involving a *specific* type of tax (input taxes), whereas the cited provisions of the *CTA Law* cover the inaction of the CIR on *all kinds of controversies appealable to this Court*. As such, *Section 112(c) of the NIRC*, as amended by *TRAIN*, must be considered the specific *special* law that prevails over the broad *general* provisions of the *CTA Law*.

In any event, even if the Court were to consider the *CTA Law* as a special law that takes priority over *TRAIN*, the repeal of the former by the latter is allowed when legislative intent is present, as observed in the majority opinion itself. And as already discussed in the preceding pages, *TRAIN*'s deletion of the relevant passage (paired with *EOPTA*'s reintroduction of the same) already show such intent. *Section 112(c) of the NIRC*, as specifically amended by *TRAIN*, consequently still prevails over *Section 7(a)(2) of the CTA Law*.

TRAIN's removal of the relevant phrases must consequently be construed as the explicit removal of the option to raise an appeal from the CIR's inaction. Under *TRAIN*, a judicial claim could *not* be raised based on the CIR's inaction. A taxpayer's only option, as far as raising a judicial claim goes, was to await the CIR's decision.

Considering the above, I now believe that We erred in dismissing this case through the assailed Decision. I consequently believe that the MR should be at least partially granted. I do not, however, believe that the MR should be fully granted, as I find that petitioner failed to prove its entitlement to the refund sought.

Petitioner failed to establish that it was engaged in zero-rated or effectively zero-rated sales for the 3rd quarter of CY 2017.

One requisite for claiming the refund of unutilized input VAT attributable to zero-rated sales is that the taxpayer be engaged in zero-rated or effectively zero-rated sales.[8] In this case, petitioner claims that its sale of services to foreign clients are VAT zero-rated. In accordance with this claim, the relevant VAT zero-rating provision is *Sections 108(B) (2) of the NIRC,* which provides:

> (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.
>
> . . . .
>
> (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);

To qualify for VAT zero-rating under *Section 108 (B)(2) of the NIRC,* the following are the requisites: a) the nature of sale is one of service (*i.e.,* not sale of goods); b) the service should be rendered within the Philippines; c) the services were rendered in favor of persons engaged in business conducted outside the Philippines (*i.e.,* non-resident foreign corporation("NRFC")) or to a non-resident person not engaged in business who is outside the Philippines when the services were performed; and d) the payment or consideration was paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas ("BSP").

To determine the nature of the sale, whether it is indeed a sale of service, the evidence to be presented is the Service Agreement between the VAT refund claimant and the NRFC. Moreover, a Service Agreement will show the place where the service to the NRFC will be performed, *i.e.,* if it is in fact in the Philippines as required by *Section 108 (B)(2) of the NIRC.*

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8 Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 155732, 27 April 2007; San Roque Power Corporation v. Commissioner of Internal Revenue, G.R. No. 180345, 25 November 2009; AT&T Communications Services Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 182364, 3 August 2010.

Despite the importance of a Service Agreement to a VAT refund claim under *Section 108 (B)(2) of the NIRC,* petitioner failed to present the same. In the ICPA Report,[9] the ICPA himself noted that petitioner failed to present any Service Agreement between it and its NRFC clients: "[a]s part of the audit procedures, to ascertain the nature of services provided as well as the fees paid for the services rendered by the Petitioner to Offsourcing Inc., copies of the billing statements and/or invoices together with any Service Agreement between the Petitioner and Offsourcing Inc. have not been provided for review as of report date." Moreover, the Formal Offer of Evidence filed by petitioner confirms that it failed to offer any Service Agreement between it and its NRFC clients.[10]

This only establishes that petitioner did not present any Service Agreement to prove the nature of its engagement with its NRFC clients, and where such engagement was performed. Consequently, petitioner failed to establish the requisites for VAT zero-rating under *Section 108 (B) (2) of the NIRC.* As such, it failed to prove that its alleged sales of services are indeed zero-rated sales of services. Such failure is fatal to its cause. Therefore, the instant VAT refund claim should be denied for lack of substantive merit.

ALL TOLD, I vote that the instant Motion for Reconsideration be **GRANTED**, that the assailed Decision be **REVERSED** and **SET ASIDE**, but that the Petition for Review be instead **DENIED** for lack of merit.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[9] Exhibit "P-11", Rollo, p. 162.
[10] Rollo, pp. 313-346.