REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

AMADEUS MARKETING PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA *EB* NO. 2137
(CTA Case No. 9441)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

AMADEUS MARKETING PHILIPPINES, INC.,
Respondent.

CTA *EB* NO. 2153
(CTA Case No. 9441)

Present:

DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

Promulgated:
JAN 2 6 2021
2:42p.m.

x -- x

DECISION

MODESTO-SAN PEDRO, J.:

The Case

For resolution are the consolidated Petitions for Review, respectively, filed by Amadeus Marketing Philippines, Inc., (hereinafter referred to as "Amadeus") on 7 October 2019[1] and the Commissioner of Internal Revenue

[1] Petition for Review, *EB* No. 2137 *Rollo,* pp. 7-53, with annexes.

("CIR") on 19 September 2019,[2] under ***Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals ("RRCTA")***.[3] Both parties seek the reversal and setting aside of the Decision promulgated on 30 April 2019, and Resolution, dated 5 September 2019, by the Special Second Division ("Court in Division") partially granting Amadeus' request for refund or issuance of a tax credit certificate in the reduced amount of ₱2,616,481.61.

The Parties

Amadeus is a corporation duly registered under Philippine Laws with Securities and Exchange Commission ("SEC") Company Registration No. A1997-11194. It holds office at 36th Floor, LKG Tower, 6801 Ayala Avenue, Makati City. Likewise, it is a Value-Added Tax ("VAT")-registered entity with Bureau of Internal Revenue ("BIR") Certificate of Registration No. OCN 9RC0000133815 and Taxpayer's Identification Number 005-374-900-000.

Amadeus is primarily engaged in the business of marketing in the Philippines an automated computerized reservations system, known as the "Amadeus Global Travel Distribution" that incorporates a software package which performs various functions, such as real line airlines seat reservations, schedules booking for a variety of air, boat, train, package tours, car rental, and hotel services, automatic ticketing, and fare pricing displays in the Philippines.

Meanwhile, CIR is the chief of the BIR who is vested by the National Internal Revenue Code of 1997, as amended, (hereinafter referred to as "Tax Code") with the authority to decide, approve, and grant tax refunds. He may be served with summons and other Court processes at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On 31 March 2016, Amadeus filed its application requesting for the refund and/or issuance of a tax credit certificate of its alleged excess/unutilized input VAT attributable to its zero-rated sales/receipts amounting to ₱16,939,138.14 for the 1st to 4th quarters of taxable year 2014 to the BIR.[4]

Claiming inaction on the part of the CIR, Amadeus filed the original Petition for Review on 25 August 2016.[5]

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2 Petition for Review, *EB* No. 2153 *Rollo,* pp. 1-53, with annexes.
3 A.M. No. 05-11-07-CTA, 22 November 2005.
4 Decision, *EB* No. 2137 *Rollo,* pp. 36-53; *EB* No. 2153 *Rollo,* pp. 18-35.
5 *Ibid.*

On 30 April 2019, the Court in Division rendered the assailed Decision which partially granted the original Petition for Review.[6] The dispositive portion is hereby quoted, to wit:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **₱2,616,481.61**, representing its excess and unutilized input VAT attributable to zero- rated sales for the four quarters of TY 2014.
>
> **SO ORDERED.**"

In the assailed Decision, the Court in Division disallowed a portion of Amadeus' alleged zero-rated sales in the amount of ₱33,982.10 for failure to establish that its customers were non-resident foreign corporations doing business outside the Philippines. Likewise, a portion of Amadeus' sales to Amadeus IT Group SA in the amount of ₱36,202,475.38 was disallowed due to its failure to prove receipt of inward remittance. Therefore, out of the total reported zero-rated sales of ₱349,721,704.35, only the amount of ₱313,485,246.87 was ruled by the Court in Division to be valid zero-rated sales for the 1st to 4th Quarters of 2014.[7] Per case records, the valid zero-rated sales are Amadeus' sales of service to Amadeus IT Group SA.

The Court in Division also disallowed a portion of Amadeus' claimed input taxes in the amount of ₱3,264,129.03 for failure to properly substantiate the same with VAT invoices and official receipts. Hence, from the total claimed input VAT of ₱16,939,138.14, the Court in Division only considered the total amount of ₱12,670,317.45 as Amadeus' valid input VAT.[8]

However, instead of granting Amadeus the full refund of ₱12,670,317.45, the Court in Division found that it failed to prove that its claimed input VAT had not been applied against its output VAT liabilities in subsequent periods in the amount of ₱10,053,835.84. Hence, Amadeus was only granted a partial refund of ₱2,616,481.61.[9]

Aggrieved, both the CIR and Amadeus filed their respective Motions for Reconsideration on 16 May 2019 and 17 May 2019. Thereafter, Amadeus filed its Comment/Opposition (To Respondent's Motion for Partial Reconsideration dated May 16, 2019) on 13 June 2019. The CIR did not file his Comment per the Court's Records Verification Report dated 18 June 2019.[10]

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6 *Ibid.*
7 *Ibid.*
8 *Ibid.*
9 *Ibid.*
10 Resolution, *EB* No. 2137 *Rollo*, pp. 24-35; *EB* No. 2153 *Rollo*, pp. 36-48.

On 5 September 2019, the Court in Division issued the assailed Resolution denying the parties' respective Motions for Reconsideration.[11]

The CIR received the assailed Resolution on 5 September 2019, while Amadeus received the same on 6 September 2019.

On 20 September 2019, Amadeus filed a Motion for Extension of Time to File Petition for Review.[12] It requested an additional period of fifteen (15) days from 21 September 2019 or until 6 October 2019 to file its Petition for Review. The Motion was granted by the Court *En Banc* in a Minute Resolution.[13]

Meanwhile, on 19 September 2019, the CIR posted the instant Petition for Review with the Court *En Banc,* which was docketed as Court of Tax Appeals ("CTA") *EB* No. 2153.[14]

Since 6 October 2019 falls on a Sunday, Amadeus filed its Petition for Review on 7 October 2019, which was docketed as CTA *EB* No. 2137.[15]

Subsequently, CTA *EB* No. 2153 was consolidated with CTA *EB* No. 2137 on 9 October 2019.[16]

On 29 October 2019, the Court *En Banc* issued a Resolution ordering the parties to file their respective comments or to manifest if they intend to adopt their arguments in their Petition for Review as their comments.[17]

On 15 November 2019, the CIR posted his Manifestation stating that he would be adopting all the arguments in his Petition for Review as his Comment to the Petition for Review filed by Amadeus.[18]

Meanwhile, on 27 November 2019, Amadeus filed its Comment/Opposition (To Petition for Review filed by Commissioner of Internal Revenue dated September 19, 2019).[19] The same was filed within the extended period granted by the Court *En Banc.*[20]

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[11] *Ibid.*
[12] Motion for Extension of Time to File Petition for Review, *EB* No. 2137 *Rollo*, pp.1-5.
[13] Minute Resolution, *EB* No. 2137 *Rollo*, p. 6.
[14] Petition for Review, *EB* No. 2153 *Rollo*, pp. 1-53, with annexes.
[15] Petition for Review, *EB* No. 2137 *Rollo*, pp. 7-53, with annexes.
[16] Minute Resolution, *EB* No. 2137 *Rollo*, p. 54.
[17] Resolution, *EB* No. 2137 *Rollo*, pp. 56-58.
[18] Manifestation, *EB* No. 2137 *Rollo*, pp. 66-68.
[19] Comment/Opposition (To Petition for Review filed by Commissioner of Internal Revenue dated September 19, 2019), *EB* No. 2137 *Rollo*, pp. 70-79.
[20] Minute Resolution, *EB* No. 2137 *Rollo*, p. 65.

On 8 January 2020, the Court *En Banc* promulgated a Resolution submitting the above-captioned cases for decision. Hence, this Decision.[21]

The Issues

Amadeus raises the following issues for the Court *En Banc*'s resolution:[22]

> WHETHER THE COURT IN DIVISION ERRED IN DISALLOWING THE AMOUNT OF ₱10,053,835.84 AS VALID INPUT VAT ATTRIBUTABLE TO ZERO-RATED SALES THAT IS REFUNDABLE TO AMADEUS; AND
>
> WHETHER THE COURT IN DIVISION ERRED IN DISALLOWING THE ZERO-RATED SALES OF AMADEUS AMOUNTING TO ₱36,202,475.38.

Meanwhile, the CIR advances the following issues:[23]

> WHETHER AMADEUS' JUDICIAL CLAIM WAS PREMATURELY FILED; AND
>
> WHETHER AMADEUS' CLIENT "AMADEUS IT GROUP SA" IS DOING BUSINESS IN THE PHILIPPINES AND, THUS, THE SERVICES RENDERED TO IT DO NOT QUALIFY FOR VAT ZERO-RATING.

Arguments of the Parties

Amadeus' Arguments[24]

Amadeus contends that the Court in Division erred in deducting the amount of ₱10,053,835.84 from its total refundable input VAT. It explains that the Court in Division only considered its "First Quarter VAT Return for CY 2016,"[25] which shows that it deducted the total claimed input VAT of ₱16,939,138.14 from its total input VAT; and its "Amended Second Quarter VAT Return for CY 2016,"[26] which illustrates that it reflected the amount of

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[21] Resolution, *EB* No. 2137 *Rollo,* pp. 80-83.
[22] Petition for Review, EB No. 2137 Rollo, pp. 7-53, with annexes.
[23] Petition for Review, *EB* No. 2153 *Rollo,* pp. 1-53, with annexes.
[24] Petition for Review, *EB* No. 2137 *Rollo,* pp. 7-53, with annexes.
[25] Exhibit "P-120".
[26] Exhibit "P-122".

₱94,060,638.52 as input VAT carried over from previous period which is ₱10,053,835.84 higher than what it was supposed to carry over.

Amadeus alleges that the Court in Division failed to consider its "Fourth Quarter VAT Return for CY 2015".[27] The said Return shows that Amadeus had initially deducted the amount of ₱16,939,138.14 from its total available input VAT. Hence, it argues that the amount being claimed for refund/tax credit had already been deducted twice, as illustrated:

	2015 4th Quarter VAT Return Amended	2016 1st Quarter VAT Return Final Amended	2016 2nd Quarter VAT Return Final Amended
Total Output Tax	₱ 296,670.88	₱ 25,142.33	₱ 465,551.69
Input Tax Carry-Over	86,191,868.57	90,992,770.02	94,060,638.52
Transitional Input Tax	7,168,391.89	6,871,721.01	6,620,305.48
Deferred on Capital Goods	1,819,105.76	1,090,589.75	1,761,240.27
Current Input Taxes	4,524,900.38	3,777,242.66	5,683,867.39
Total Input Taxes	99,704,266.60	102,732,323.44	108,126,051.66
Less:			
Deferred	1,394,272.84	1,761,240.28	1,699,146.22
Refund	**16,939,138.14**	**16,939,138.14**	-
Total Deductions	18,333,410.98	18,700,378.42	1,699,146.22
Total Allowable Input Taxes	81,370,855.62	84,031,945.02	106,426,905.44
Net VAT Payable (Refundable)	₱ (81,074,184.74)	₱ (84,006,802.69)	₱ (105,961,353.75)

Taking into account the double deduction, Amadeus argues that it is entitled to a refund of ₱9,637,034.47 instead of ₱2,616,481.61, computed as follows:

Valid Excess Input VAT as reported by the ICPA and considered by the Court	₱ 12,670,317.45
Less: increase of the input tax carried from previous quarter (₱90,992,770.02-₱81,074,184.74)	9,918,585.28
Valid Excess Input VAT	2,751,732.17
Add: Amount Deducted in 1st quarter of 2016	16,939,138.14
Less: increase of the input tax carried from previous quarter (₱94,060,638.52-₱84,006,802.68)	10,053,835.84
Valid excess input VAT attributable to valid zero-rated sales	₱ 9,637,034.47

[27] Exhibit "P-29".

Finally, Amadeus counters the finding of the Court in Division disallowing its zero-rated sales to Amadeus IT Group SA in the amount of ₱36,202,475.38 on the ground that it failed to prove the receipt of payment via inward remittance.

Amadeus asks the Court *En Banc* to take into consideration the testimony of its witness Myra Luna Davalos, the proof of inward remittances it presented in Court marked as Exhibit "P-10", and the findings of the Independent Certified Public Accountant ("ICPA"), which all prove that the aforementioned zero-rated sales were received via inward remittances.

CIR's Arguments[28]

The CIR alleges that Amadeus' judicial claim should have been dismissed on the ground of prematurity. He explains that based on record, Amadeus submitted its supporting documents to its administrative claim on 1 July 2016, which he alleges is the reckoning date of the 120-day period for him to rule on the said claim. Hence, he argues that Amadeus should have filed its original Petition for Review 30 days after the end of the 120-day period or between the period of 30 October 2016 until 29 November 2016. Since the original Petition was filed on 25 August 2016, he argues that the judicial claim was prematurely filed.

Likewise, he argues that all sales rendered by Amadeus to Amadeus IT Group SA should be disallowed on the ground that the later is an entity doing business in the Philippines. The CIR insists for the Court *En Banc* to adopt the factual findings in the case of ***Amadeus Marketing Philippines Inc., v. CIR., (hereinafter referred to as "Previous Amadeus Case")***[29] where it was found that Amadeus IT Group SA is an entity doing business in the Philippines.

Amadeus' Counter-Arguments[30]

Amadeus belies the arguments of the CIR. It points out that its judicial claim was timely elevated. It argues that, by virtue of ***Revenue Memorandum Circular ("RMC") No. 54-2014***,[31] all taxpayers claiming for refund/tax credit are required to submit their complete supporting documents upon submission of their administrative claim to the BIR. The said circular does not permit, and in fact forbids the taxpayer from submitting additional supporting documents after the filing of an administrative claim.

[28] Petition for Review, *EB* No. 2153 *Rollo*, pp. 1-53, with annexes.
[29] CTA *EB* Case No. 1532, 5 April 2018.
[30] Comment/Opposition (To Petition for Review filed by the Commissioner of Internal Revenue dated September 19, 2019), *EB* No. 2137 *Rollo*, pp. 70-79.
[31] Subject: Clarifying Issues Relative to the Application for Value-Added Tax ("VAT") Refund/Credit under Section 112 of the Tax Code, As Amended, 11 June 2014.

On the basis of the foregoing, Amadeus explains that, under the current rule, the reckoning period of the 120-day period will always be tacked from the time of the filing of the administrative claim regardless of whether the taxpayer subsequently submits additional supporting documents to the BIR. On this notion, Amadeus argues that its judicial claim was timely filed.

Meanwhile, on the argument of the CIR that its sales to Amadeus IT Group SA should be disallowed on the ground that it is an entity doing business in the Philippines, Amadeus stresses that this issue has already been settled by the Court in Division finding the evidence it had presented to be sufficient in proving that Amadeus IT Group SA is a non-resident foreign corporation doing business outside the Philippines.

The Ruling of the Court

In order to arrive at an orderly disposition of the issues raised by both parties, the Court *En Banc* deems it proper to first resolve the arguments raised by the CIR.

Amadeus' judicial claim for input VAT refund/tax credit was timely filed.

Section 112(C) of the Tax Code provides for the period within which a taxpayer may file its judicial claim for refund or tax credit of its creditable input VAT attributable to zero-rated sales, to wit:

> **"SEC. 112. Refunds or Tax Credits of Input Tax. –**
>
> 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**."[32]

[32] Emphasis supplied.

Based on the foregoing provision, the CIR is given a period of 120 days, reckoning from the date of submission of the taxpayer's complete supporting documents, to act on its application for input tax refund/tax credit. If a decision averse to the taxpayer is rendered or if the CIR fails to resolve the application within the 120-day period, the taxpayer will have the option of appealing its application to the CTA. The judicial claim would have to be filed within 30 days either from receipt of the adverse decision, or from the lapse of the 120-day period.

The filing of the judicial claim within the 30-day period after the expiration of the 120-day period is both mandatory and jurisdictional. Hence, failure to file the claim within the stated period renders the claim outside the jurisdiction of the CTA and, therefore, dismissible, as discussed in the case of ***Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. Commissioner of Internal Revenue***,[33] to wit:

> "The **judicial claim shall be filed within a period of 30 days after the receipt of respondent's decision or ruling or after the expiration of the 120-day period, whichever is sooner**.
>
> Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, **any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the jurisdiction of the CTA**."[34]

Corollary thereto is the case of ***Pilipinas Total Gas, Inc. v. CIR (hereinafter referred to as "Total Gas Case")***,[35] where the Supreme Court ruled that administrative claims filed on or after 11 June 2014 must follow the requirements set forth in RMC No. 54-2014. The said RMC requires the taxpayer to submit its complete supporting documents together with its administrative claim for input VAT refund/credit. The current rule now forbids the submission of additional documents after the filing of the administrative claim. The relevant portion of the case is hereby quoted, as follows:

> 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**

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[33] G.R. No. 182737, 2 March 2016.
[34] Emphasis supplied.
[35] G.R. No. 207112, 8 December 2015.

> **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**."[36]

In line with the ***Total Gas Case***, the standing rule on the reckoning of the 120-day period for administrative claims filed on or after 11 June 2014 is that it starts from the filing of the said claim with the BIR. Any submission of documents made thereafter will not affect the counting of the 120-day period since the said submission is now no longer legally permitted.

Applying the foregoing in this case, Amadeus filed its administrative claim for refund/tax credit on 31 March 2016. Even assuming that Amadeus did submit additional supporting documents on 1 July 2016, the same would not affect the reckoning date of the 120-day period consistent with the mandate of ***RMC No. 54-2014*** and the ***Total Gas Case***.

Considering the same, the CIR had 120 days from 31 March 2016, or until 29 July 2016, to act on Amadeus' claim. Since the CIR did not act on the claim, Amadeus had 30 days after the expiration of the 120-day period, or from 30 July 2016 to 30 August 2016,[37] within which to file its judicial claim. In this case, the original Petition was filed on 25 August 2016. Hence, there is no dispute that the judicial claim was timely elevated to the CTA.

[36] Emphasis supplied.
[37] 28 August 2016 fell on a Sunday and 29 August 2016 fell on a holiday (National Heroes' Day).

This is consistent with the Court *En Banc's* ruling in ***Kodec Precision, Inc. v. CIR***,[38] to wit:

> "Simply put, for administrative claims for refund/tax credit of input VAT filed on or after June 11, 2014, **the 120-day period for respondent to decide an administrative claim shall always be reckoned from the taxpayer's filing of its administrative claim since it is the only instance submission of complete supporting documents is legally permitted**.
>
> As admitted, petitioner filed its administrative claim for refund on November 29, 2016. **Granting that petitioner submitted additional supporting documents on May 9, 2016, the same was of no moment as it was done long before the filing of the administrative claim for refund on November 29, 2016. Under RMC No. 54-2014 and jurisprudence, such submission could not be considered for the purpose of counting the 120-day period for respondent to take action on the claim**. **In the instant case, the 120-day period should be reckoned from November 29, 2016, or the date when petitioner's administrative claim for refund was filed there being on showing that additional documents were separately filed on a later date.** A fortiori respondent had at most March 29, 2017 to decide or act on the claim. With the commencement of the 30-day period on March 29, 2017, 21 petitioner had until April 28, 2017 to file its appeal before the Court in Division. Clearly, the Petition for Review was belatedly instituted with the Court in Division on September 4, 2017. Note that respondent's denial of petitioner's administrative claim for refund was issued only on July 25, 2017, or clearly beyond the 120-day waiting period."

Clearly, we see no error in the Court in Division's Decision and Resolution finding the judicial claim to have been timely filed.

Amadeus IT Group SA is an entity doing business in the Philippines. Hence, all sales of service rendered to it do not qualify for VAT zero-rating.

In this case, the CIR argues that the Court in Division erred in not disallowing Amadeus' sale of services to Amadeus IT Group SA on the ground that the latter is an entity doing business in the Philippines. The CIR invokes the Court *En Banc*'s ruling in the ***Previous Amadeus Case*** where it ruled that Amadeus IT Group SA is an entity doing business in the Philippines on account of the Amadeus Commercial Organization ("ACO") Agreement.

The Court *En Banc* finds the CIR's argument meritorious.

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[38] CTA *EB* Case No. 1762, 8 April 2019.

Section 108(B)(2) of the Tax Code provides that a service performed in the Philippines by a VAT-registered person may be subject to zero percent (0%) rate if proven that the said service was rendered to a person not engaged in business in the Philippines, to wit:

> "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.
>
> (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 this case, the Court in Division ruled that Amadeus IT Group SA is a foreign entity doing business outside the Philippines, anchoring its ruling on the documents presented by Amadeus including the former's Authenticated Articles of Association, and the SEC Certificate of Non-Registration.

However, after a thorough review of the documents submitted by Amadeus, including the ACO Agreement it had entered by and between Amadeus IT Group SA, the Court *En Banc* is constrained to overturn the decision of the Court in Division.

The Court *En Banc* agrees with the Court in Division and Amadeus that, as a general rule, the presentation of both Foreign Articles/Certificate of Incorporation and SEC Certificate of Non-Registration will ordinarily prove that an entity is a foreign corporation not doing business in the Philippines.[39] However, an exception to this rule is when there is clear and convincing evidence that would prove otherwise.[40]

To reiterate, one of the pieces of evidence submitted by Amadeus is its ACO Agreement[41] which delineates the relationship between Amadeus and Amadeus IT Group SA.

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[39] Chevron Holdings, Inc. v. CIR, CTA EB Case Nos. 1508 & 1509, 21 March 2018.
[40] Amadeus Marketing Philippines, Inc., v. CIR, CTA *EB* Case No. 1838, 26 November 2019.
[41] Exhibit "P-4", Court in Division Docket Vol. 2, pp. 722-740.

Under the said agreement, Amadeus IT Group SA is in the business of "marketing and commercial activities the widespread availability of the computerized information, products and services stored in the Amadeus Global Core".[42] In order to meet its objective, Amadeus IT Group SA contracted with Amadeus where the latter agreed to market, promote, offer and distribute the Amadeus System in the Philippines on a commission basis.[43]

Aside from this, the ACO Agreement is replete with provisions that signified Amadeus IT Group SA's participation in running the marketing and distribution of the Amadeus System in the Philippines, some of which are as follows:

> a) Amadeus IT Group SA is permitted to directly contract with multinational subscribers whether the same is based within or outside the Philippines;[44]
>
> b) Amadeus IT Group SA may contract with subscribers within the Philippines pertaining to CRS services through Amadeus online and corporate products;[45]
>
> c) Amadeus is duty bound to honor any obligation undertaken by Amadeus IT Group SA with third-party licensors relative to the marketing, offering, promoting of the Amadeus products;[46] and
>
> d) Amadeus IT Group SA may, on its own, terminate the agreement entered between any Philippine subscriber in the event of misuse or abuse of the Amadeus System.[47]

Clearly, the ACO Agreement paved the way for Amadeus IT Group SA with Amadeus to further advance its purpose to continually promote, market, and distribute the Amadeus System in the Philippines. These and its powers, above, fall squarely under the definition of "doing business in the Philippines" under ***Section 3(d) of Republic Act No. 7042***, to wit:

> "d) The phrase "doing business" shall include soliciting orders, service contracts, opening offices, whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or control of any domestic business, firm, entity or corporation in the Philippines; and **any other act or acts that imply a**

42 *Ibid.*
43 *Ibid.*
44 *Ibid.*
45 *Ibid,*
46 *Ibid.*
47 *Ibid.*

> **continuity of commercial dealings or arrangements, and contemplate 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 of the purpose and object of the business organization**: Provided, however, That the phrase "doing business: shall not be deemed to include mere investment as a shareholder by a foreign entity in domestic corporations duly registered to do business, and/or the exercise of rights as such investor; nor having a nominee director or officer to represent its interests in such corporation; nor appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account;"[48]

Based on the foregoing, the Court *En Banc* finds Amadeus IT Group SA doing business in the Philippines.

Considering that the alleged zero-rated sales validated by the Court in Division in the amount of ₱313,485,246.87 are all services done by Amadeus to Amadeus IT Group SA, it follows that none of Amadeus's services qualifies for zero-rating and as such it is not entitled to claim a refund/tax credit of input VAT for the 1st to 4th quarters of CY 2014.

Given the aforementioned findings of this Court, the Court *En Banc* sees no reason to belabor on the arguments raised by Amadeus in its Petition for Review.

WHEREFORE, premises considered, the Petition for Review filed by Amadeus Marketing Philippines, Inc., docketed as CTA *EB* Case No. 2137 is hereby **DENIED** for lack of merit.

Meanwhile, the Petition for Review filed by the Commissioner of Internal Revenue, docketed as CTA *EB* Case No. 2153 is hereby **GRANTED.**

Accordingly, the Decision, promulgated on 30 April 2019, and the Resolution, dated 5 September 2019, by the CTA Special Second Division are hereby **REVERSED** and **SET ASIDE** for Amadeus Marketing Philippines, Inc.'s failure to prove its entitlement to the VAT refund or Tax Credit Certificate being claimed. Consequently, the original Petition for Review filed by Amadeus is hereby **DENIED** for lack of merit.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

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[48] Emphasis supplied.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

C E R T I F I C A T I O N

Pursuant to *Article VIII, Section 13 of the Constitution*, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice