REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SC JOHNSON PHILIPINES, ROHQ, Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE, Respondent.

CTA CASE NO. 9357

Members:

CASTAÑEDA, JR., Chairperson
MINDARO-GRULLA, *and*
BACORRO-VILLENA, *JJ.*

Promulgated:

JUN 16 2020 1:30 PM

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RESOLUTION

MINDARO-GRULLA, J.:

Before this Court is petitioner's **Motion for Reconsideration** filed on December 13, 2019, without respondent's comment as per Records Verification report dated February 17, 2020.

On November 28, 2019, a Decision was promulgated by this Court, denying petitioner's claim for refund of creditable input value-added tax (VAT) for failing to sufficiently prove its entitlement thereto, the dispositive portion of which reads as follows:

> **WHEREFORE**, in light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED.**

In its Motion, petitioner primarily asserts that contrary to the above Decision, it satisfactorily complied with the requisites for a claim for refund. With regard to the timeliness of its judicial appeal, petitioner avers that the ruling in the case of *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*[1] ("*Silicon* case" hereafter), which this Court relied upon, is inapplicable in the present case. In the *Silicon* case, it was pronounced that the 30-day period within which to file a judicial claim must be made after the receipt of the decision of the Commissioner of Internal Revenue (CIR), or after the expiration of the 120-day period, whichever is sooner. However, in that case, the pronouncement was made due to the CIR's failure to act on petitioner Silicon's claim for refund within the 120-day period. In the present case, respondent rendered his decision within the 120-day period from the time the administrative claim was filed, albeit, petitioner received it ten (10) days after. Thus, petitioner claims that the 30-day period within which to file the judicial claim for refund should be reckoned from the date it received respondent's decision and not from the expiration of the 120-day period.

As to the other requirements laid down in order to claim for refund, petitioner maintains that it has sufficiently complied with them. Petitioner insists that all its customers are foreign corporations with business address outside the Philippines. It also manifests that the invoices and official receipts it issued to its customers would readily show that the latter are doing business outside the Philippines. Furthermore, petitioner claims that its Securities and Exchange Commission (SEC) license shows that it is engaged in services other than "processing, manufacturing or repacking goods" rendered to persons doing business outside the Philippines, within the purview of Section 108(B)(2) of the National internal Revenue Code (NIRC) of 1997, as amended. Lastly, petitioner wants this Court to consider the tax returns and audited financial statements it filed with the Bureau of Internal Revenue (BIR) and the SEC as proof that its declared income was sourced from within the Philippines and, therefore, complies with the requirement that the services were performed in the Philippines.

After due consideration, petitioner's Motion for Reconsideration is bereft of merit. At the outset, the arguments it raised in the present Motion have already been passed upon and resolved in the Decision it assails.

As held in the assailed Decision, petitioner's administrative claim for October 1 to December 31, 2013 was filed on December 23, 2015. The expiration of the 120-day period within which respondent

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[1] G.R. No. 182737, March 2, 2016.

may act on the claim ended on April 21, 2016. However, respondent's decision was dated April 15, 2016, but was received by petitioner on April 25, 2016. Hence, this Court pronounced that the judicial claim covering October 1 to December 31, 2013 was belatedly filed.

Again, it is clear from the *Silicon* case that the 30-day period should be reckoned either from the date of actual receipt of the decision or the expiration of the 120-day period, whichever is earlier. The fact that the decision was dated within the 120-day period does not affect the 30-day period within which to file a judicial claim. The reckoning period is still the date of receipt of the decision or the expiration of the 120-day period, whichever is sooner.

As to the other requisites for a claim for refund, this Court still maintains that petitioner failed to comply with the second, third and fourth requisites for its claim for refund to prosper.

It is noteworthy that this Court had already scrutinized and examined the petitioner's documentary evidence, considered all legal and factual arguments raised by both parties, and meticulously discussed its findings in the assailed Decision.

To reiterate, Section 108(B)(2) of the NIRC of 1997, as amended, the following essential elements has to be present in order for its sale or supply of services be subject to value-added tax (VAT) at zero percent (0%):

1. The payment for the said services should be in acceptable foreign currency accounted for in accordance with BSP rules;

2. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a nonresident person not engaged in business who is outside the Philippines when the services were performed;

3. The services fall under any of the categories under Section 108(B)(2), or simply, the services rendered should be other than "processing, manufacturing or repacking goods"; and,

4. The services must be performed in the Philippines by the VAT-registered person.

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As highlighted in the assailed Decision, petitioner only complied with the first element. With regard to the second, third and fourth element, petitioner failed to sufficiently prove its compliance thereto. While petitioner was able to show the alleged addresses of its clients, there is no evidence showing that they are foreign corporation and are doing business outside the Philippines. More so, this Court already noted that the Intercompany Services Agreement petitioner submitted to purportedly show that it performed services other than "processing, manufacturing or repacking goods", reveals that petitioner is not even a signatory therein. Lastly, this Court found that there was no indication that the services were actually rendered in the Philippines. While petitioner filed its tax returns and AFS with the BIR, the same still does not prove such fact.

Consequently, finding no cogent reason to reverse or modify the assailed Decision, this Court denies the present Motion.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice