REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

SPECIAL SECOND DIVISION

AMMEX I-SUPPORT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. **10147**

Members:

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

Promulgated:
AUG 02 2022 10:19 AM

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Ammex I-Support Corporation's (**petitioner**'s) "Motion for Reconsideration"[1] (**MR**), filed on 02 February 2022, with respondent Commissioner of Internal Revenue's (**respondent**'s) "Opposition (Re: Motion for Reconsideration of the Decision promulgated 9 December 2021)"[2] (**Opposition**) thereto, filed on 03 March 2022.

Petitioner seeks the reversal of this Court's Decision promulgated on 09 December 2021[3] (**assailed Decision**) in the above-captioned case. The dispositive portion of which reads:

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[1] Division Docket, pp. 408-513, with annexes.
[2] Id., pp. 516-520.
[3] Id., pp. 379-404.

...

WHEREFORE, premises considered, the instant Petition for Review filed on 01 August 2019 by petitioner Ammex I-Support Corporation is hereby **DENIED** for lack of merit.

SO ORDERED.

...

In its MR[4], petitioner insists that this Court erred in ruling that it failed to substantiate its alleged zero-rated sales as it unsuccessfully proved that it rendered services to non-resident foreign corporations (**NRFCs**) doing business outside the Philippines considering the non-admission into evidence of Exhibits "ICPA P-14.5", "ICPA P-15", "ICPA P-15.1" and "ICPA P-15.2"[5], initially for failure to identify[6] and, upon further review, since the identification thereof does not correspond to the description of the exhibits as marked and stated in its Formal Offer of Evidence (**FOE**).[7]

In respect of the non-admission of the aforementioned exhibits, petitioner argues that the same have been taken into consideration by the court-commissioned Independent Certified Public Accountant (**ICPA**), Lorenz Samuel D. Gomez (**Gomez**), in his ICPA Report dated 13 January 2020[8], which was duly identified during the presentation of

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4 Supra at note 1.

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Exhibit No.	Description	Identification
"ICPA P-14.5"	Certificate of Corporate Filing/Information – Echez Solutions Sdn Bhd.	Identified as **Certificate of Non-Registration** of Echez Solutions Sdn Bhd. in the Judicial Affidavit of Lorenz Samuel Gomez dated 20 January 2020.
"ICPA P-15"	Certificate of Incorporation – Ammex Corporation.	Identified as **Certificate of Non-Registration** of Ammex Corporation in the Judicial Affidavit of Lorenz Samuel Gomez dated 20 January 2020.
"ICPA P-15.1"	Certificate of Incorporation – Cloudstaff HK Limited.	Identified as **Certificate of Non-Registration** of Cloudstaff HK Limited in the Judicial Affidavit of Lorenz Samuel Gomez dated 20 January 2020.
"ICPA P-15.2"	Certificate from State of Florida Department of State – Echez Inc.	Identified as **Certificate of Non-Registration of Elk River Systems, Inc. ("DBA Ticket Printing")** in the Judicial Affidavit of Lorenz Samuel Gomez dated 20 January 2020.

6 *See* Resolution dated 14 February 2020, Division Docket, pp. 302-304.

7 *See* Resolution dated 02 October 2020, id., pp. 343-347.

8 Exhibit "P-10", id., pp. 229-295.

his testimonial, and the said denied exhibits were also incorporated therein.

Respondent, in his Opposition[9], echoes this Court's ruling that petitioner failed to prove the two-fold requirement for zero-rating under Section 108(B)(2)[10] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, namely: (1) that the taxpayer-claimant's clients or affiliates are foreign corporations (which can be proven by the SEC Certifications of Non-Registration of Company); and, (2) that said clients or affiliates are **not doing business in the Philippines** (the prima facie proof of which is the articles of association/ certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines).

Respondent also asserts that petitioner has the burden of proving entitlement to the tax refund sought as claims for refund are in the nature of tax exemptions, which are construed *strictissimi juris* against the taxpayer-claimant.

We rule below.

After due consideration of petitioner's arguments, this Court still finds no merit in its MR.

It is well-settled that the Court is not bound by the findings of the ICPA. Section 3, Rule 13 of the Revised Rules of the Court of Tax Appeals (**RRCTA**) provides:

...

RULE 13
TRIAL BY COMMISSIONER

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9 Supra at note 2.

10 **SEC. 108**. *Value-Added Tax on Sale of Services and Use or Lease of Properties.* —

...

(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)**. (Emphasis supplied.)

> ...
> SEC. 3. *Findings of independent CPA.* — The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be the primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA may be challenged by the parties and shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**[11]
> ...

Clearly from the foregoing, the report submitted by the ICPA is a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court. Thus, herein petitioner cannot insist that the ICPA Gomez's findings alone are sufficient to support its refund claim. It is essential for petitioner to present documents to support its compliance with the above two-fold requirement for zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, and the rest of the requisites for the grant of refund, because the Court cannot solely rely on the ICPA Report.

Time and again, the Court has held that the ICPA is commissioned merely to assist the Court in the determination of the merit of taxpayer's claims. The Court may (or may not) adopt totally or partially the ICPA's Report depending on its own appreciation of the documents upon which the ICPA Report is based. In other words, the Court will still examine and verify the documents audited or examined by the ICPA. The Court, in its sound discretion, may render judgment without considering the ICPA Report. The ICPA Report is only persuasive in nature and not conclusive upon the Court.[12]

We reiterate, for emphasis, that based on this Court's independent verification, petitioner failed to prove that it rendered services to NRFCs doing business outside the Philippines because (1) it did not submit the Certificates of Foreign Registration of five (5) out of its seven (7) NRFC clients and (2) the Certificates of Foreign

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11 Italics in the original text; Emphasis supplied.

12 *See Tanduay Distillers, Inc. v. Commissioner of Internal Revenue*, CTA EB No. 2101, 14 October 2020; *Commissioner of Internal Revenue v. Next Mobile, Inc.*, CTA EB Nos. 1864 & 1865, 28 February 2020.

Registration of the other two (2) NRFC clients (marked as Exhibits "ICPA P-15" and "ICPA P-15.1") were not admitted into evidence.[13] No other evidence was proffered to prove that petitioner's NRFC clients were not doing business in the Philippines aside from the aforesaid denied exhibits.

Consequently, petitioner failed to discharge the burden of proving that its sales are entitled to VAT zero-rating as contemplated under Section 108(B)(2) of the NIRC of 1997, as amended.

All told, this Court finds no justifiable reason to reverse or modify the conclusions reached in the assailed Decision.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration filed on 02 February 2022 is **DENIED** for lack of merit.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

LANEE S. CUI-DAVID
Associate Justice

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Registered Name of Client		Certificate of Foreign Registration Exhibit No.	*Per* Resolution dated 02 October 2020
1	AMMEX CORPORATION	"ICPA P-15"	Denied admission.
2	CLASSIC ACCESSORIES, INC.	-	
3	CLOUDSTAFF HK LTD.	"ICPA P-15.1"	Denied admission.
4	COPIERS NORTHWEST INC.	-	
5	CSG SERVICES CORPORATION	-	
6	FIBERFIX LLC	-	
7	COSTLESS EXPRESS LTD. DBA LYKKI	-	