REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

AMADEUS MARKETING PHILIPPINES, INC., Petitioner,	**CTA EB NO. 1905** **(CTA Case No. 9107)**
	Present:
-versus-	Del Rosario, *P.J.,* Castañeda, Jr., Uy, Fabon-Victorino, Ringpis-Liban, Manahan, Bacorro-Villena, *and* Modesto-San Pedro, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** JUN 3 0 2020 4:05 p.m.

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DECISION

CASTAÑEDA, JR., J.:

Before the Court *En Banc* is a Petition for Review filed by Amadeus Marketing Philippines, Inc. (Amadeus Philippines) under Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA) in relation to Rule 43 of the Rules of Court which seeks to reverse and set aside the following:

1. February 6, 2018 Decision[1] of the CTA Third Division,[2] the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **DENIED** for lack of merit.
>
> **SO ORDERED**."

[1] Annex B, Petition for Review, *Rollo*, pp. 44-59.

[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban with the concurrence of Associate Justice Esperanza R. Fabon-Victorino. Associate Justice Lovell R. Bautista rendered his own Concurring and Dissenting Opinion.

2. July 19, 2018 Resolution[3] denying the Motion for Reconsideration (Re: Decision Rendered February 6, 2018) of Amadeus for lack of merit.

THE FACTS

The facts are summarized from the February 6, 2018 Decision and condensed from the records, as follows:

The Parties

Petitioner Amadeus Philippines is a corporation duly organized and existing under the laws of the Republic of the Philippines, with address at 36th Floor, LKG Tower, 6801 Ayala Avenue, Makati City. It is duly registered with the Securities and Exchange Commission (SEC) with Company Registration No. A1997-11194. Petitioner is also a VAT-registered entity as evidenced by its Certificate of Registration No. OCN 9RC0000133815 and Taxpayer's Identification No. (TIN) 005-374-900-000 issued on January 1, 1998 by the Bureau of Internal Revenue (BIR).[4]

As stated in its Articles of Incorporation, petitioner is primarily engaged in the business of marketing an automated computerized reservations system called the "Amadeus Global Travel Distribution," which incorporates a software package that performs various functions, including real-line airlines seat reservations, schedules bookings for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing and fare pricing displays in the Philippines.[5]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

Relevant Facts

On August 13, 1997, petitioner Amadeus Philippines entered into an Amadeus Commercial Organization (ACO) Agreement with Amadeus IT Group, S.A. (Amadeus Spain),[7] incorporated as a private limited company and registered in Madrid Mercantile Registry with registered offices in Madrid, gc

[3] Annex B, Petition for Review, *Rollo*, pp. 39-42.
[4] February 6, 2018 Decision, *Rollo*, pp. 44-45.
[5] February 6, 2018 Decision, *Rollo*, p. 45.
[6] *Id.*
[7] February 6, 2018 Decision, *Rollo*, p. 55.

Spain.[8] Amadeus Spain is the parent company of petitioner Amadeus Philippines and owns almost 100% of the total subscribed shares of petitioner.[9]

The "main ordinary activity" of Amadeus Spain "consists in the marketing, sale and distribution of every product and information technology of the Amadeus Group for the travel and tourism industry."[10] These activities "may be carried out either in Spain or abroad, in whole or partially, indirectly, through investment in other companies with the same or similar corporate purpose."[11] Amadeus Spain belongs to the Amadeus Group, which is "a leading transaction processor for the global travel and tourism industry, providing advanced technology solutions to its travel provider and travel agency customers worldwide. The Group acts as an international network providing comprehensive real-time search, pricing, booking, ticketing and other processing solutions to travel providers and travel agencies through its distribution services, and offer travel providers (principally airlines) an extensive portfolio of technology solutions which automate certain mission-critical business processes, such as reservations, inventory management and other operational processes, through its IT Solutions services."[12] Its customer groups include providers of travel products and services such as airlines, tour operators, insurance companies, road and sea transport companies, travel sellers and brokers and travel buyers.[13]

Under the ACO Agreement, Amadeus Spain authorized Amadeus Philippines to market, offer and promote Amadeus System to subscribers, by means of Amadeus products, and to carry out necessary actions in the Amadeus Philippines's territory in order to give appropriate access to subscribers, to the Amadeus Global Core, or to other computer databases offered or to be offered by Amadeus under license from a third party.[14]

Most of the revenues/receipts of petitioner Amadeus Philippines's are from its marketing services rendered to foreign companies.[15]

On March 26, 2015, petitioner filed an application for VAT refund of the amount of ₱27,729,564.16 for the four (4) quarters of Calendar Year (CY) 2013 with the BIR Revenue District Office (RDO) No. 50, Makati Avenue, Makati City.[16]

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[8] Authenticated Articles of Association of Amadeus IT Group S.A., Exhibit "P-6", Division Docket, Vol. 3, p. 1247.
[9] Judicial Affidavit of Krizel Sansano, Finance Supervisor, Exhibit "P-90", Division Docket, Vol. 3, p. 1206.
[10] Auditors' Report, Annual Accounts and Directors' Report for the years ended December 31, 2013, Exhibit "P-9", p. 1285.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] ACO Agreement, Exhibit "P-4", Division Docket, Vol. 3, p. 1228.
[15] Administrative Claim / Letter dated March 26, 2015, Exhibit "P-26", Division Docket, Vol. 3, p. 1445.
[16] February 6, 2018 Decision, *Rollo*, p. 55.

Amadeus Philippines, likewise, submitted supporting documents, including an affidavit under oath attesting to the completeness of the documents submitted.[17]

In a letter dated June 22, 2015, respondent rendered a decision denying Amadeus Philippines's claim for refund which was received by petitioner on July 2, 2015.[18]

CTA 3rd Division Proceedings

Consequently, on July 30, 2015, Amadeus Philippines filed a Petition for Review before the Court *a quo*.[19]

Respondent filed his Answer through registered mail on August 18, 2015 and received by the Court on August 28, 2015, interposing the following defenses:[20]

- Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

- The taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

- It is incumbent upon the petitioner to show that it has complied with the provision of Section 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;

- Petitioner's claim for refund or issuance of tax credit certificate in the amount of Twenty Seven Million Seven Hundred Twenty Nine Thousand Five Hundred Sixty Four and 16/100 Pesos (₱27,729,564.16) as alleged unutilized input VAT paid on purchases of goods and services attributable to its zero-rated sales for the four quarters of taxable year 2013 was not fully substantiated by proper documents, such as sales invoices, official receipts and others;

- In a claim for tax refund or credit, the taxpayer must prove not only entitlement to the grant of the claim under substantive law, it must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a tax refund or credit (*Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, 518 SCRA 425); and,

- Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner*

[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.* at pp. 45-46.

> *of Internal Revenue vs. Ledesma*, 31 SCRA 95) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 121).

On October 20, 2015, the case was set for Pre-Trial Conference. Respondent's Pre-Trial Brief was filed through registered mail on October 6, 2015 and received by the Court on October 15, 2015; while petitioner's Pre-Trial Brief was filed on October 15, 2015.[21]

The parties filed their Joint Stipulation of Facts and Issues on October 29, 2015. Thereafter, the Court issued a Pre-Trial Order on November 26, 2015.[22]

Petitioner Amadeus Philippines presented Krizel Sansano, Myra Luna Davalos, and Independent Certified Public Accountant (CPA) Joseph Cedric V. Calica, as its witnesses.[23]

On July 27, 2016, petitioner filed its Formal Offer of Evidence, offering Exhibits "P-90", "P-90-A", "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-13", "P-13-A", "P-13-B", "P-14", "P-15", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-26-A", "P-26-B", "P-27", "P-27-A", "P-27-B", "P-28", "P-92", "P-92-A", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-54-a", "P-55", "P-55-a", "P-56", "P-56-a", "P-57", "P-57-a", "P-58", "P-58-a", "P-59", "P-59-a", "P-60", "P-60-a", "P-61", "P-61-a", "P-62", "P-62-a", "P-63", "P-63-a", "P-64", "P-64-a", "P-65", "P-65-a", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", "P-73", "P-74", "P-75", "P-76", "P-77", "P-78", "P-79", "P-80", "P-81", "P-82", "P-83", "P-84", "P-85", "P-86", "P-87", "P-88", "P-89", "P-149", "P-149-A", "P-148", "P-148-A", "P-101", "P-102", "P-102-1" to "P-102-1,159", "P-103", "P-104", "P-104-1" to "P-104-399", "P-105", "P-105-1", "P-105-2", "P-105-3", "P-105-4", "P-105-5", "P-105-6", "P-105-7", "P-105-8", "P-105-9", "P-105-10", "P-106-1" to "P-106-52" with sub-markings, "P-107" with sub-markings, "P-108-1" to "P-108-2" with sub-markings, "P-109-1" to "P-109-10" with sub-markings, "P-110", "P-111", "P-112-1" to "P-112-2" with sub-markings, "P-113", "P-113-1" to "P-113-12", "P-114", "P-115", "P-116", "P-116-1" to "P-116-12", "P-117", "P-118", "P-119", "P-120", "P-121", "P-122", "P-123", "P-124", "P-125", "P-126", "P-127", "P-128", "P-129", "P-130", "P-131", "P-132", "P-133", "P-134", "P-135", "P-136", "P-137", "P-138", "P-139", "P-140", "P-141", "P-142", "P-143", "P-144", "P-145", "P-146", "P-147", "P-5", "P-6", "P-7", "P-8", and "P-9" as its documentary evidence.[24]

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[21] *Id.* at p. 46.
[22] *Id.*
[23] *Id.*
[24] *Id.* at pp. 46-47.

Respondent filed his Comment (To: Petitioner's Formal Offer of Evidence) through registered mail on July 29, 2016 and received by the Court on August 10, 2016.[25]

In the Resolution dated September 8, 2016, the Court *a quo* admitted all of the above-enumerated formally offered exhibits as petitioner's evidence.[26]

On the other hand, respondent manifested that he has no other witness to present. Thus, the Court *a quo* ordered the parties to simultaneously file their respective memoranda.[27]

Respondent's Memorandum was filed through registered mail on December 23, 2016 and received by the Court on January 11, 2017; while petitioner's Memorandum was filed on February 6, 2017.[28]

The case was submitted for decision on February 10, 2017.[29]

The parties stipulated the following issues for the Court *a quo*'s resolution:[30]

A. Whether petitioner is entitled to refund for the unutilized VAT input taxes in the total amount of Twenty Seven Million Seven Hundred Twenty Nine Thousand Five Hundred Sixty Four & 16/100 (₱27,729,564.16), representing unutilized VAT input taxes for the 1st, 2nd, 3rd and 4th quarters of the taxable year 2013.

B. Whether petitioner is engaged in zero-rated or effectively zero-rated sales.

C. Whether the input taxes being claimed are due or paid.

D. Whether the input taxes being claimed have *not* been applied against output taxes during the covered quarters and in the succeeding quarters.

E. Whether the input taxes claimed are attributable to zero-rated or effectively zero-rated sales.

F. Whether the claim is filed within two (2) years after the close of the taxable quarter when such sales were made.

The foregoing issues were simplified into whether the petitioner is entitled to a refund of the amount of ₱27,729,564.16 allegedly representing

[25] *Id.* at p. 47.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.* at pp. 47-48.

its unutilized input VAT attributable to its zero-rated sales for the four quarters of CY 2013.[31]

On February 6, 2018, the Court *a quo* promulgated its decision which denied the claim for tax refund or credit for lack of merit.[32]

On July 19, 2018, the Court *a quo* denied petitioner's Motion for Reconsideration (Re: Decision Rendered February 6, 2018) for lack of merit.[33]

CTA En Banc Proceedings

On August 8, 2018 the petitioner Amadeus Philippines filed the instant Petition for Review assailing the February 6, 2018 decision.[34]

In a September 19, 2018 Resolution, the Court *En Banc* ordered the respondent to file his comment on the petition within ten (10) days from notice.[35]

In a Resolution dated January 23, 2019, the Court *En Banc* noted that, despite notice, respondent failed to file his comment and, thus, directed the parties to file their memoranda within thirty (30) days from receipt of the resolution.[36]

On April 2, 2019, Amadeus Philippines filed its Memorandum[37] after being granted a final and non-extendible extension of thirty (30) days from March 3, 2019.[38]

In a Resolution dated May 2, 2019, the Court *En Banc* noted that the respondent failed to file his memorandum and, accordingly, submitted the case for decision.[39]

THE ISSUES

In assailing the February 6, 2018 Decision and July 19, 2018 Resolution of the Court *a quo*, Amadeus Philippines raised three errors:[40]

A. "The Honorable Third Division erred in ruling that Amadeus IT Group S.A. is doing business in the Philippines;

[31] *Id.* at p. 48.
[32] *Id.* at pp. 44-59.
[33] *Id.* at pp. 39-56.
[34] *Id.* at pp. 8-33.
[35] *Id.* at pp. 70-71.
[36] *Id.* at pp. 74-75.
[37] *Id.* at pp. 83-107.
[38] *Id.* at p. 82.
[39] *Id.* at pp. 110-111.
[40] Petition for Review, *Rollo*, pp. 12-13.

B. The Honorable Third Division erred in relying on the pronouncement in the Accenture case that the recipient of the service must be specifically proven to be a nonresident foreign corporation; and,

C. The Honorable Third Division erred in ruling that Petitioner is not entitled to the refund of the amount of ₱27,729,564.16 representing its unutilized input VAT attributable to its zero-rated sales for the four quarters of calendar year 2013."

THIS COURT'S RULING

We resolve to deny the petition and uphold the assailed decision and resolution of the CTA Third Division.

Petitioner Amadeus Philippines anchors its appeal on the theory that its parent company and supplier of services, Amadeus Spain,[41] which was incorporated as a private limited company and registered in Madrid Mercantile Registry with registered offices in Madrid, Spain,[42] is *not* doing business in the Philippines and, thus, considered a *non*-resident foreign corporation. Accordingly, Amadeus Philippines maintains that it is *entitled* to a refund or tax credit of the input VAT attributable to its zero-rated sales of services to Amadeus Spain, pursuant to the ACO Agreement.[43] Petitioner's input VAT refund or credit claim amounts to ₱27,729,564.16 and covers the four (4) quarters of CY 2013 based on Section 108(B)(2) in relation to Section 112 of the Tax Code.[44]

Petitioner's basis for the instant claim is Section 108(B)(2) in relation to Section 112 of the Tax Code, which provides:

"**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.* - <u>The following services performed in the Philippines by VAT- registered persons shall be subject to zero percent (0%) rate</u>.

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and

[41] February 6, 2018 Decision, *Rollo*, p. 55.
[42] Authenticated Articles of Association of Amadeus IT Group S.A., Exhibit "P-6", Division Docket, Vol. 3, p. 1247.
[43] Judicial Affidavit of Krizel Sansano, Finance Supervisor, Division Docket, Vol. 3, p. 1202; ACO Agreement, Exhibit "P-4", Division Docket, Vol. 3, pp. 1225-1243.
[44] Memorandum, *Rollo*, pp. 89-106.

accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph rendered to a person engaged in business conducted outside the Philippines or to nonresident person not engaged in trade or 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);

xxx xxx xxx

SEC. 112. *Refunds or Tax Credits of Input Tax.* -

(A) *Zero-Rated or Effectively Zero-Rated Sales.*- Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: *Provided, however,* That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further,* That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales."

The threshold question in this case is whether Amadeus Spain is engaged in trade or business in the Philippines which, thus, disqualifies the sales of Amadeus Philippines to the former from VAT zero-rating under Section 108(B)(2) of the Tax Code.

First, there are existing provisions of law which provide a definition of what constitutes doing business in the Philippines.

Although the *old* Corporation Code[45] provides no definition for the phrase "doing business", Section 1 of Republic Act No. 5455 (RA 5455) or the Foreign Business Regulations Act,[46] supplies one:

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[45] The Revised Corporation Code of the Philippines took effect on February 23, 2019.
[46] AN ACT TO REQUIRE THAT THE MAKING OF INVESTMENTS AND THE DOING OF BUSINESS WITHIN THE PHILIPPINES BY FOREIGNERS OR BUSINESS ORGANIZATIONS OWNED IN WHOLE OR IN PART BY FOREIGNERS SHOULD CONTRIBUTE TO THE SOUND AND BALANCED DEVELOPMENT OF THE NATIONAL ECONOMY ON A SELF-SUSTAINING BASIS, AND FOR OTHER PURPOSES, published in the Official Gazette, Vol. 65, No. 29, p. 7410 on July 21, 1969.

> "xxx the phrase '**doing business**' shall include **soliciting orders, purchases, service contracts, opening offices**, whether called 'liaison' offices or branches; **appointing representatives or distributors who are domiciled in the Philippines** or who in any calendar year stay in the Philippines for a period or periods totaling one hundred eighty 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 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**." (*Emphasis and underscoring supplied*)

This is also the exact definition provided under Article 44 of the Omnibus Investments Code of 1987.

Republic Act No. 7042 (RA 7042), or the Foreign Investments Act of 1991, which repealed Articles 44-56 of Book II of the Omnibus Investments Code of 1987, enumerated not only the acts or activities which constitute "doing business" but also those activities which are not deemed "doing business." Section 3(d) of RA 7042 states in pertinent part:

> "SEC. 3. *Definitions.* — As used in this Act:
>
> xxx xxx xxx
>
> 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 totaling 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 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;" (*Emphases and underscoring supplied*)

Under Section 22 of the Tax Code, resident and non-resident foreign corporations are defined respectively as follows: Jr

"**TITLE II**
TAX ON INCOME

CHAPTER I - DEFINITIONS

SEC. 22 ***Definitions*** - When used in this Title:

xxx xxx xxx

(H) The term **'resident foreign corporation'** applies to a foreign corporation engaged in trade or business within the Philippines.

(I) The term **'nonresident foreign corporation'** applies to a foreign corporation not engaged in trade or business within the Philippines." (*Underscoring supplied*)

Section 105 of the Tax Code furthermore provides a definition of the phrase "in the course of trade or business", thus:

"**TITLE IV**
VALUE-ADDED TAX

CHAPTER I - IMPOSITION OF TAX

SEC. 105. *Persons Liable.* - Any person who, in the course of trade or business, sells barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services.

This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.

The phrase *'in the course of trade or business'* means the **regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto**, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.

The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being rendered in the course of trade or business." (*Underscoring and emphases supplied*)

Second, it bears emphasis that, through the ACO Agreement, Amadeus Spain is in active conduct or pursuit of economic activities that are consistent with and fall under its corporate purpose.

It will be recalled that under Article 4 of the Articles of Association,[47] Amadeus Spain's corporate purpose is delineated as follows:

> "Article 4. The company's corporate purpose shall be the transfer of data from and/or through computer booking systems, including offers, bookings, prices, travel tickets and/or the like; any other services related to travel and tourism industry, the provision of IT and data processing, management and consulting services related to data systems; as well as the provision of services related to the offering and distribution of any kind of product by computer; the production, sale and distribution of software, hardware and accessories of any kind. To such effect, the corporate purpose shall also include incorporating Spanish or foreign subsidiaries; as well as establishing their objectives, strategies and priorities; coordinating the subsidiaries' activities; defining their financial objectives; controlling their behavior and financial efficiency and, in general, the management and control thereof." (*Underscoring supplied*)

These corporate activities enumerated in Amadeus Spain's purpose are clearly embraced within the definition and scope of the phrase "doing business" under Section 3(d) of RA 7042, which shall include "*soliciting orders, service contracts*, opening offices, whether called 'liaison' offices or branches; *appointing* xxx *distributors* domiciled in the Philippines xxx; participating in the *management*, supervision or *control* of any domestic business, firm, entity or corporation in the Philippines."

Third, petitioner's position that it transacts business in its own name and account[48] is contradicted by the significant *control* exercised by Amadeus Spain under the ACO Agreement, which undermines the legal and economic independence of Amadeus Philippines as its majority-owned subsidiary.[49]

Even with the appointment of Amadeus Philippines under the ACO Agreement, Amadeus Spain is expressly granted active participation and control in the marketing, promotion and distribution of the Amadeus system and/or products in the Philippines, specifically:

1. Amadeus Spain shall have the right to define and establish the conditions for the use of the Proprietary Marks by Amadeus Philippines, including but not limited to the conditions under which the Proprietary Marks may be used in conjunction with

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[47] Authenticated Articles of Association of Amadeus IT Group S.A., Exhibit "P-6", Division Docket, Vol. 3, p. 1251.
[48] Memorandum, *Rollo*, pp. 92-95.
[49] According the Finance Supervisor of Amadeus Philippines, almost 100% of the total subscribed shares of Amadeus Philippines is owned its parent Amadeus Spain. *See* Exhibit "P-90", Division Docket, Vol. 3, p. 1206.

other names or marks and conditions for the use of Proprietary Marks primarily associated with other National Marketing Companies.[50]

2. Amadeus Spain can undertake any obligation with a third-party licensor, including obligations with respect to the marketing, offering and promotion of, and technical and other support for, the licensed AMADEUS Product; and petitioner is required to honor any of such undertaking within the Philippines;[51]

3. Amadeus Spain retains the responsibility of negotiating and entering into agreements with international providers (airline, hotel, car rental company, railroad company, tour operator, or other supplier of travel-related services, products or information that has contracted to use the Amadeus System and/or other Amadeus products to market or distribute its services, products or information);[52]

4. In case of abuse of the AMADEUS System by Subscriber in the Philippines, Amadeus Spain may: (a) require the Subscriber to stop such misuse, and/or, (b) exercise its right to terminate the agreement with the same Subscriber on account of such abuse, and/or (c) in the case that such abuse consists of excessive use in relation to the number of Bookings generated or of such other abuse as can reasonably be ameliorated by payment of financial compensation, require the Subscriber to pay a fee for such use;[53]

5. Amadeus Spain shall contract directly to Multinational Subscribers that have their headquarters or Branches in the Philippines;[54]

6. Amadeus Spain has the right to contract with Subscribers within the Philippines relative to the computerized reservation system (CRS) services through AMADEUS on-line and corporate products;[55] and,

7. Amadeus IT Group S.A. undertakes to provide basic training program covering the use of the AMADEUS products for marketing, offering and promoting purposes, and initial training materials, to petitioner to facilitate the introduction of the same products.[56]

[50] Par. 3.4, ACO Agreement, Exhibit "P-4", Division Docket, Vol. 3, p. 1229.
[51] Par. 5, ACO Agreement, Exhibit "P-4", *Id.*
[52] Par. 8.1, ACO Agreement, Exhibit "P-4", *Id.* at p. 1230.
[53] Par. 9.3, ACO Agreement, Exhibit "P-4", *Id.* at p. 1231.
[54] Par. 9.4, ACO Agreement), Exhibit "P-4", *Id.*
[55] Par. 9.5, ACO Agreement), Exhibit "P-4", *Id.*
[56] Par. 11.1, ACO Agreement), Exhibit "P-4", *Id.* at p. 1232.

Thus, on the basis of the ACO Agreement, the inevitable conclusion is that Amadeus Spain is doing business in the Philippines. Correspondingly, the services rendered by petitioner to its parent, Amadeus Spain, cannot be treated as subject to the zero percent (0%) VAT under Section 108(B)(2) of the Tax Code, as amended.

Fourth, the ACO Agreement, which covers the marketing, promotion, offer and distribution of the Amadeus system in the Philippines[57] constitute "doing business in the Philippines" on the part of a foreign corporation under Philippine jurisprudence. The transactions or business dealings pursuant to this agreement are not isolated, occasional or casual. Specifically, the ACO Agreement reveals *continuous* commercial dealings and arrangements between the parties and clearly manifest Amadeus Spain's conduct and intention to pursue its business in the Philippines.

In *MR Holdings, Ltd. v. Sheriff Carlos P. Bajar, et al.*,[58] the Supreme Court made the following pronouncements as to what acts constitute "doing business in the Philippines" on the part of a foreign corporation, to wit:

> "The Court of Appeals ruled that petitioner has no legal capacity to sue in the Philippine courts because it is a foreign corporation doing business here without license. A review of this ruling does not pose much complexity as the principles governing a foreign corporation's right to sue in local courts have long been settled by our Corporation Law. These principles may be condensed in three statements, to wit: a) if a foreign corporation does business in the Philippines without a license, it cannot sue before the Philippine courts; b) if a foreign corporation is not doing business in the Philippines, it needs no license to sue before Philippine courts on an isolated transaction or on a cause of action entirely independent of any business transaction; and c) if a foreign corporation does business in the Philippines with the required license, it can sue before Philippine courts on any transaction. Apparently, it is not the absence of the prescribed license but the 'doing (of) business' in the Philippines without such license which debars the foreign corporation from access to our courts.
>
> The task at hand requires us to weigh the facts vis-à-vis the established principles. The question whether or not a foreign corporation is doing business is dependent principally upon the facts and circumstances of each particular case, considered in the light of the purposes and language of the pertinent statute or statutes involved and of the general principles governing the jurisdictional authority of the state over such corporations.
>
> Batas Pambansa Blg. 68, otherwise known as 'The Corporation Code of the Philippines,' is silent as to what constitutes 'doing' or 'transacting' business in the Philippines. Fortunately, jurisprudence has supplied the deficiency and has held that the term 'implies a continuity of commercial dealings and arrangements, and contemplates, 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, the purpose and

[57] ACO Agreement, Exhibit "P-4", Division Docket, *Id.* at p. 1226.
[58] G.R. No. 138104, April 11, 2002.

object for which the corporation was organized.' In *Mentholatum Co., Inc. vs. Mangaliman*, this Court laid down the test to determine whether a foreign company is 'doing business,' thus:

> '.... The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. (Traction Cos. vs. Collectors of Int. Revenue [C.C.A., Ohio], 223 F. 984,987.) ....'

The traditional case law definition has metamorphosed into a statutory definition, having been adopted with some qualifications in various pieces of legislation in our jurisdiction. For instance, Republic Act No. 7042, otherwise known as the 'Foreign Investment Act of 1991,' defines 'doing business' as follows:

> '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 totaling one hundred eight(y) (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 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.' (Italics supplied)

Likewise, Section 1 of Republic Act No. 5455, provides that:

> '*SECTION 1. Definition and scope of this Act.* — (1) ... the phrase 'doing business' shall include soliciting orders, purchases, service contracts, opening offices, whether called 'liaison' offices or branches; appointing representatives or distributors who are domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totaling one hundred eighty 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 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.*'

There are other statutes defining the term 'doing business' in the same tenor as those above-quoted, and as may be observed, one common denominator among them all is the concept of 'continuity.'" (*Underscoring supplied*)

In *Commissioner of Internal Revenue v. British Overseas Airways Corporation, et al.*,[59] the Supreme Court *En Banc* found that a foreign corporation was doing business in the Philippines and explained its holding in this wise:

> "Under Section 20 of the 1977 Tax Code:
>
> (h) the term resident foreign corporation engaged in trade or business within the Philippines or having an office or place of business therein.
>
> (i) The term 'non-resident foreign corporation' applies to a foreign corporation not engaged in trade or business within the Philippines and not having any office or place of business therein
>
> It is our considered opinion that BOAC is a resident foreign corporation. There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a **continuity of commercial dealings and arrangements**, and contemplates, 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 for **the purpose and object of the business organization**. 'In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character.'
>
> BOAC, during the periods covered by the subject - assessments, maintained a general sales agent in the Philippines, That general sales agent, from 1959 to 1971, 'was engaged in (1) selling and issuing tickets; (2) breaking down the whole trip into series of trips — each trip in the series corresponding to a different airline company; (3) receiving the fare from the whole trip; and (4) consequently allocating to the various airline companies on the basis of their participation in the services rendered through the mode of interline settlement as prescribed by Article VI of the Resolution No. 850 of the IATA Agreement.' Those activities were in exercise of the functions which are normally incident to, and are in **progressive pursuit of, the purpose and object of its organization as an international air carrier**. In fact, the regular sale of tickets, its main activity, is the very lifeblood of the airline business, the generation of sales being the paramount objective. There should be no doubt then that BOAC was 'engaged in' business in the Philippines through a local agent during the period covered by the

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[59] G.R. No. L-65773-74, April 30, 1987.

> assessments. Accordingly, it is a resident foreign corporation subject to tax upon its total net income received in the preceding taxable year from all sources within the Philippines." (*Underscoring and emphases supplied*)

To sum up, in order that a foreign corporation may be considered engaged in trade or business, its business transaction must be continuous, as in the case of Amadeus Spain. And such *continuity* may be shown by "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 for the purpose and object of the business organization" and is exemplified by "the appointment of a local agent."

Finally, a refund is not a matter of right by the mere fact that a taxpayer has undisputed excess input VAT or that such tax was admittedly illegally, erroneously or excessively collected.[60] "Tax refunds or tax credits — just like tax exemptions — are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."[61] "This is the reason why a claimant must positively show compliance with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim."[62]

WHEREFORE, premises considered, the Petition for Review is **DENIED** for lack of merit. The February 6, 2018 Decision and the July 19, 2018 Resolution are hereby **AFFIRMED**.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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[60] *Harte-Hanks Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205721, September 14, 2016.

[61] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (now TeaM Energy Corporation)*, G.R. No. 180434, January 20, 2016.

[62] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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 case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice