REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

AMADEUS MARKETING PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8628

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

JUN 22 2016 ; 4:10 p.m.

x - x

RESOLUTION

MINDARO-GRULLA, ***J.*:**

This resolves petitioner's **Motion for Reconsideration/New Trial**, filed on February 9, 2016, without respondent's comment, despite due notice, as per Records Verification dated April 6, 2016.

Petitioner seeks the reversal of the Court's Decision[1] (assailed Decision) promulgated on January 22, 2016 which denied its claim for refund in the amount of ₱30,118,219.40 allegedly representing its unutilized input value-added tax (VAT) attributable to its zero-rated sales for the four quarters of calendar year (CY) 2011. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review filed by Amadeus Marketing Philippines, Inc. is hereby **DENIED** for lack of merit.

[1] Docket, pp. 1201-1229.

SO ORDERED."[2]

Petitioner raises the following grounds:

I. Contrary to this Honorable Court's Decision, there is no legal and factual basis to hold that Amadeus IT Group SA, the recipient of petitioner's services, is 'doing business' in the Philippines considering that:

A. The Honorable Court erred in concluding that being "in the course of trade or business" under Section 105 of the National Internal Revenue Code ("NIRC") of 1997, as amended, equates to the concept of 'doing business' or "engaged in business" contemplated under Sections 108(B)(1) and 108(B)(2) as well as Sections 22(H), 28(A)(1), and 28(B)(1) of the NIRC of 1997, as amended;

B. The Honorable Court erred in construing the withholding of VAT on payments to non-resident foreign persons in accordance with Section 105 of the NIRC of 1997, as amended, as an indication that the said non-resident foreign person is 'doing business' or 'engaging in trade or business' in the Philippines; and

C. Applying the jurisprudential definition of what constitutes 'doing business,' there is no showing that Amadeus IT Group SA is 'doing business' in the Philippines.

II. To uphold the ruling of the Honorable Court in the instant case would not only adversely affect taxpayers like the petitioner who are claiming for refunds or tax credit under Section 108(B)(2) of the NIRC of 1997, as amended, but would also seriously deprive non-residents of entitlement to the benefits granted under tax treaties which the Philippines is obliged, under international law, to comply with.

[2] Docket, p. 1228.

III. The outcome of the instant case would change and failure of justice would be prevented if the petitioner is allowed to present evidence to show that "Amadeus IT Group SA," the signatory to the ACO Agreement, and "Amadeus Global Travel Distribution SA," the signatory to the Distribution Agreement, are one and the same corporate entity.

The Motion for Reconsideration/New Trial is bereft of merit.

Petitioner's sale of service to Amadeus IT Group S.A. cannot qualify for VAT zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended, because Amadeus IT Group S.A., the recipient of service, is doing business in the Philippines.

The relevant provision of the NIRC of 1997, as amended, is quoted hereunder as follows:

> 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.
>
> xxx xxx xxx
>
> (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);" xxx (Emphases ours)

Based on the foregoing, the recipient of the service under Section 108(B)(2)[3] of the NIRC of 1997, as amended, must not be

[3] Previously Section 102(b).

doing business in the Philippines. The rationale behind this requirement was explained in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[4] where the Supreme Court stated that:

> "This can only be the logical interpretation of Section 102(b)(2). If the provider and recipient of the 'other services' are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply to a payer-recipient of services doing business in the Philippines is to make the payment of the regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.
>
> When Section 102(b)(2) stipulates payment in 'acceptable foreign currency' under BSP rules, the law clearly envisions the payer-recipient of services to be doing business outside the Philippines. Only those not doing business in the Philippines can be required under BSP rules to pay in acceptable foreign currency for their purchase of goods or services from the Philippines. In a domestic transaction, where the provider and recipient of services are both doing business in the Philippines, the BSP cannot require any party to make payment in foreign currency.
>
> Services covered by Section 102(b)(1) and (2) are in the nature of export sales since the payer-recipient of services is doing business outside the Philippines. Under BSP rules, the proceeds of export sales must be reported to *the Bangko Sentral ng Pilipinas*. Thus, there is reason to require the provider of services under Section 102(b) (1) and (2) to account for the foreign currency proceeds

[4] G.R. No. 153205, January 22, 2007.

to the BSP. The same rationale does not apply if the provider and recipient of the services are both doing business in the Philippines since their transaction is not in the nature of an export sale even if payment is denominated in foreign currency.

Further, when the provider and recipient of services are **both** doing business in the Philippines, their transaction falls squarely under Section 102(a) governing **domestic** sale or exchange of services. Indeed, this is a purely local sale or exchange of services subject to the regular VAT, unless of course the transaction falls under the other provisions of Section 102(b).

Thus, when Section 102(b)(2) speaks of **'[s]ervices other than those mentioned in the preceding subparagraph,'** the legislative intent is that only the services are different between subparagraphs 1 and 2. The requirements for zero-rating, including the essential condition that the recipient of services is doing business outside the Philippines, remain the same under both subparagraphs.

Significantly, the amended Section 108(b) [previously Section 102(b)] of the present Tax Code clarifies this legislative intent. Expressly included among the transactions subject to 0% VAT are '**[s]**ervices other than those mentioned in the [first] paragraph [of Section 108 (b)] 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 BSP."

Furthermore, in *Commissioner of Internal Revenue vs. British Overseas Airways Corporation and the Court of Tax Appeals,*[5] (*BOAC* case) the Supreme Court defined the term "doing business" in this wise:

"There is no specific criterion as to what constitutes 'doing' or 'engaging in' or 'transacting' business. Each

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

> 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.' (Emphasis ours)

Thus, the term "doing business" as contemplated in Section 108(B)(2) of the NIRC of 1997, as amended, and as defined in the *BOAC* case is based on the premise that there is continuity of business activities or dealings.

In this case, the withholding of payments to Amadeus IT Group S.A. is a strong indication that Amadeus IT Group S.A. is "doing business" in the Philippines. The reason is that services rendered within the Philippines is, by virtue of the last paragraph of Section 105 of the NIRC of 1997, as amended, deemed to have been in the regular conduct or pursuit of a commercial or an economic activity. We reiterate the findings of the Court:

> "As can be gleaned from petitioner's Quarterly VAT Returns, petitioner had input VAT on services rendered by foreign entities in the amounts of ₱3,973,690.80, ₱4,138,674.76, ₱4,295,766.62, and ₱3,538,970.58 for the first, second, third, and fourth quarters of 2011, respectively, or a total of ₱15,947,102.76. Per the Court-commissioned Independent Certified Public Accountant's (CPA) Schedule of Purchases of Goods and Services and Corresponding Input Tax for the Period January 1 to December 31, 2011, out of the said reported input taxes, ₱14,522,179.83 was supported by Monthly Remittance Returns of VAT and Other Percentage Taxes Withheld (BIR Form No. 1600), detailed as follows:

MONTH	NAME OF SUPPLIER	EXHIBIT	AMOUNT
January	Amadeus IT Group S.A.	P-102-467-1	₱ 1,247,141.65

February	Amadeus IT Group S.A.	P-102-569-1	1,442,997.45
March	Amadeus IT Group S.A.	P-102-740-1	911,258.21
April	Amadeus IT Group S.A.	P-102-785-1	1,421,517.37
May	Amadeus IT Group S.A.	P-102-940-1	1,809,918.72
June	Amadeus IT Group S.A.	P-102-1377-1	1,839,475.13
July	Amadeus IT Group S.A.	P-102-1744-1	774,473.30
August	Amadeus IT Group S.A.	P-102-1980-1	1,664,237.26
September	Amadeus IT Group S.A.	P-102-2085-1; P-102-2258-1 to P-102-2258-6	1,407,834.13
November	Amadeus IT Group S.A.	P-102-2391-1	984,596.35
December	Amadeus IT Group S.A.	P-102-2765	1,018,730.26
Total			**₱14,522,179.83**

Apparently, the foreign corporation that rendered services to petitioner in the Philippines and whose services were subjected to VAT, was also Amadeus IT Group S.A., to whom petitioner claims to have made its zero-rated sales.

Amadeus IT Group S.A. was made liable to VAT being a non-resident person who, in the course of its trade or business, rendered services in the Philippines. This is in accordance with Section 105 of the NIRC of 1997, as amended, and as implemented by Sections 4.105-1 and 4.105-3 of Revenue Regulations (RR) No. 16-2005, to wit:

> '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.'

'SECTION 4.105-1. *Persons Liable.* – Any person who, in the course of his trade or business, sells, barters, exchanges or leases goods or properties, or renders services, and any person who imports goods, shall be liable to VAT imposed in Secs. 106 to 108 of the Tax Code.

xxx xxx xxx

'Person' refers to any individual, trust, estate, partnership, corporation, joint venture, cooperative or association.

xxx xxx xxx

SECTION 4.105-3. *Meaning of 'In the Course of Trade or Business'.* – xxx

Non-resident persons who perform services in the Philippines are deemed to be making sales in the course of trade or business, even if the performance of services is not regular.'

Considering that Amadeus IT Group S.A., the recipient of petitioner's services, is doing business in the Philippines, petitioner failed to comply with the third requisite to qualify for VAT zero-rating. Consequently, the second requisite for the refund or tax credit of input VAT under Section 112(A) of the NIRC of 1997, as amended, was also not satisfied."[6]

Also, contrary to petitioner's assertion that its business dealings with Amadeus IT Group S.A. are transactions of an "isolated" nature, it bears stressing that the Amadeus Commercial Organization (ACO) Agreement entered into between petitioner and Amadeus IT Group S.A., which authorizes petitioner to market, promote, offer and distribute the Amadeus System in the Philippines, was executed as early as August 13, 1997,[7] while its Distribution Agreement with Amadeus IT Group S.A. was entered on January 1, 2001[8], and were both existing for several years.

Finally, the Court shall determine whether or not petitioner is entitled to a new trial. Sections 1 and 2, Rule 37 of the Rules of Court provide:

"Section 1. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the

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[6] Docket, pp. 1225-1227.
[7] Exhibit "P-4", docket, pp. 657-675.
[8] Exhibit "P-8", docket, pp. 686-718.

damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

SEC. 2. *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal."

In support of the Motion for Reconsideration/New Trial, petitioner attached an Affidavit of Merit[9] with an allegation that if allowed to present evidence to prove "Amadeus Global Travel Distribution S.A." and "Amadeus IT Group S.A." are one and the same entity, it would substantially change the outcome of the case.

The Court is not convinced.

Even if allowed to present additional documents for the purpose mentioned, the result would be the same considering that

[9] Docket, pp. 1289-1290.

Amadeus IT Group S.A. was found "doing business" in the Philippines.

Indeed, it has been pronounced time and again that taxes are the lifeblood of the government and, consequently, tax laws must be faithfully and strictly implemented as they are not intended to be liberally construed.[10] Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[11]

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

SO ORDERED.

CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

[10] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.,* G.R. No. 190021, October 22, 2014.

[11] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 183531, March 25, 2015.