REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MAERSK GLOBAL SERVICE CENTRES (PHILIPPINES) LTD.,
Respondent.

CTA EB NO. 1318
(CTA Case No.8549)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

DEC 05 2016 2:27 p.m.

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DECISION

Fabon-Victorino, J.:

In his bid to reverse and set aside the Amended Decision[1] dated March 13, 2015, which partially granted respondent's claim for refund or issuance of Tax Credit Certificate (TCC) in the reduced amount of ₱5,829,398.90, representing its unutilized input Value-Added Tax (VAT) attributable to its zero-rated sales for June 2009 and the third (3rd) and fourth (4th) quarters of 2009, as well as the Resolution dated May 18, 2015[2], which denied his *Motion for Reconsideration* of the assailed Amended Decision, both rendered by the Court in Division, petitioner Commissioner of Internal Revenue (CIR) filed this *Petition for Review*[3] on June 22, 2015.

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[1] *En Banc* docket, pp. 11-31.
[2] *En Banc* docket, pp. 32-38.
[3] *En Banc* docket, pp. 5-10.

The following factual antecedents, as found by the Court in Division, are undisputed:

Petitioner is the Commissioner of the Bureau of Internal Revenue (BIR) with the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Maersk Global Services Centres (Philippines), Ltd., on the other hand, is a foreign corporation, organized and existing under the laws of Hong Kong and licensed to do business in the Philippines as a regional operating headquarters (ROHQ), with principal office at the 29th Floor, Wynsum Corporate Plaza, F. Ortigas Jr. Road, Ortigas Center, Pasig City. It is registered with the BIR as a VAT taxpayer with BIR Certificate of Registration No. OCN3RC0000466671.

On October 15, 2007, respondent entered into a Service Agreement with A.P. Moller-Maersk A/S, a non-resident foreign corporation, wherein it shall provide the latter corporate and administrative services. AP Moller-Maersk A/S was respondent's sole client.

On the following dates, respondent filed with the BIR its Quarterly VAT Returns for taxable year 2009:

PERIOD	DATE OF FILING
1st Quarter	April 23, 2009
2nd Quarter	July 18, 2009
3rd Quarter	October 22, 2009
4th Quarter	January 21, 2010

On September 1, 2010, respondent filed with petitioner through the Department of Finance One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center (DOF-OSS) an application for VAT refund of its unutilized and excess creditable input taxes attributable to zero-rated sales for the four quarters of 2009 in the total amount of ₱13,120,701.70.

On February 9, 2011, respondent received a Letter of Authority (LOA) dated February 1, 2011.

On March 7, 2011, respondent received from DOF-OSS a First Notice requesting for additional documents, which it complied on March 18, 2011.

On August 30, 2012, respondent received a letter dated March 22, 2012, denying its administrative claim for refund on three grounds, to wit:

1. The Authority to Print the official receipts (OR) was approved only on May 28, 2009;

2. Petitioner set up a Bad Debts Provision with an amount equivalent to the input tax generated from the VATable purchases or amount of claim for a particular month/period; and

3. The Bad Debts Provision is included among the net costs, specifically, under Other Administration Cost/Other Administration Expenses that petitioner is charging to or reimbursing from the parent company, A.P. Moller-Maersk A/S.

On September 28, 2012, respondent filed with the Court in Division a *Petition for Review* assailing the denial of its administrative claim for refund.

In his *Answer*, petitioner argued that it is incumbent upon the taxpayer to prove its compliance with the pertinent provisions of the NIRC, particularly Sections 112, 113, and 114 to validly claim for a tax credit/refund. Petitioner claimed the denial of respondent's claim for refund is in accordance with law and regulations pertinent to the issue at hand.

On November 14, 2014, the Court in Division promulgated a Decision[4] denying respondent's entire claim

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[4] *Rollo*, pp. 823-843.

for refund ruling that respondent is not entitled to VAT zero-rating for services rendered to its non-resident foreign client, A.P. Moller-Maersk A/S, since the latter is actually doing business in the Philippines, per the testimony of respondent's Site Finance and Office Management Lead Arthur Araña, and the excerpts from the Independent Certified Public Accountant (ICPA) Report that 1.5% of the total services sold by respondent to A.P. Moller-Maersk A/S is allocable to the Philippine portion of the latter's international shipping operations.

On reconsideration, the Court in Division partially reversed itself in the assailed Amended Decision[5] of March 13, 2015 by directing petitioner to refund or to issue a tax credit certificate in favor of respondent albeit in the reduced amount of ₱5,829,398.90, representing its unutilized excess input VAT attributable to zero-rated sales for June 2009 and the 3rd and 4th quarters of 2009. The Court in Division found merit in respondent's argument that the services rendered to A.P. Moller-Maersk A/S are VAT zero-rated transactions as the small portion of the services relating to the Philippine business of A.P. Moller-Maersk A/S pertained to international shipping operations for the transport of container cargoes to and from the Philippines which were also expressly subject to VAT at zero rate under Section 108(B)(4) of the NIRC of 1997, as amended.

Unconvinced, petitioner moved for a reconsideration of the adverse decision which the Court in Division denied for lack of merit in the similarly assailed Resolution[6] of May 18, 2015.

Hence, the instant *Petition for Review* before the Court *En Banc* filed on June 22, 2015 with the following errors allegedly committed by the Court in Division, to wit:

> I. THE SECOND DIVISION ERRED IN RULING THAT RESPONDENT IS ENTITLED TO REFUND OF UNUTILIZED INPUT TAX ATTRIBUTABLE TO ZERO-RATED SALE OF SERVICES UNDER SECTION 108 PARAGRAPH B SUB-PARAGRAPH 4 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

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[5] See Note 1, *supra*.
[6] See Note 2, *supra*.

II. THE SECOND DIVISION ERRED IN RULING THAT RESPONDENT'S CLIENT IS ENGAGED IN INTERNATIONAL SHIPPING.

Petitioner asserts that respondent's sale of services to A.P. Moller-Maersk A/S are not subject to zero percent (0%) VAT rate since A.P. Moller-Maersk A/S is not only engaged in international shipping but in other businesses. Even granting that respondent is entitled to zero percent VAT rate, respondent failed to prove that the unutilized input VAT subject of the claim and awarded by the Court in Division is attributable to the sale of services to A.P. Moller-Maersk A/S international shipping business and not to its other businesses.

Petitioner as well claims that respondent's sale of services to A.P. Moller-Maersk A/S are not subject to zero percent (0%) VAT rate alleging that A.P. Moller-Maersk A/S has removed itself from being engaged in international shipping when it engaged in transport of goods and passengers from a port in the Philippines to another Philippine port.

In rejecting petitioner's arguments, respondent retorts that even if its client is engaged in other businesses, the same is totally irrelevant to the instant claim as: (1) the "other businesses" are conducted entirely outside the Philippines; and (2) A.P. Moller-Maersk A/S has no presence in the Philippines other than its international shipping operations.

Further, the record is bereft of any indication that A.P. Moller-Maersk A/S is engaged in domestic shipping since its vessels stop at Philippine ports only to unload cargoes shipped from overseas and to load cargoes for shipment abroad. Without any factual basis, petitioner's claim that A.P. Moller-Maersk A/S is engaged in domestic shipping as it transports goods and passengers from a port in the Philippines to another Philippine port, cannot be given credit.

Finally, new matters cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice and due process. Thus, petitioner cannot now raise the issue that A.P. Moller-Maersk A/S is not engaged in international shipping.

On January 14, 2016, the instant *petition* was submitted for decision, with respondent's Memorandum filed on September 14, 2015, and considering the Records Verification Report of the Judicial Records Division dated November 12, 2015 that petitioner failed to file his Memorandum, despite due notice.[7]

RULING OF THE COURT *EN BANC*

The instant petition lacks merit.

The Court in Division is correct in holding that respondent's sale of services to A.P. Moller-Maersk A/S qualify for zero-rating under Section 108(B)(4) of the NIRC of 1997, as amended.

Petitioner insists that respondent's sale of services to A.P. Moller-Maersk A/S do not qualify for VAT zero-rating under Section 108(B)(4) given that A.P. Moller-Maersk A/S is not only engaged in international shipping but also in other businesses, such as Gas and Oil, Drilling, Terminal, Tankers.

Section 108(B)(4) of the NIRC of 1997, as amended, provides:

> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties.* —
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> xxx xxx xxx

[7] Resolution, *En Banc* docket, pp. 71-72.

> (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
>
> (4) **Services rendered to persons engaged in international shipping** or international air transport operations, including leases of property for use thereof; (*Boldfacing supplied*)

The law is clear. To qualify for VAT zero-rating, export services by a VAT-registered person must be rendered in the Philippines to a person engaged in international shipping. No other qualification is required from the recipient of such services neither is there any prohibition for it to engage in other trade or business. Thus, to adhere to petitioner's contention is to impose a restriction upon A.P. Moller-Maersk A/S from venturing into other businesses just for respondent to avail of the VAT zero-rating which is clearly not in the law. Basic is the rule that when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says.

Moreover, as pointed out by respondent in its *Comment*[8] dated July 31, 2015, whether A.P. Moller-Maersk A/S is engaged in other businesses is totally of no moment to the instant claim for refund as the latter's other businesses are all conducted outside the Philippines. More importantly, the export services rendered by respondent to A.P. Moller-Maersk A/S relates to the latter's international shipping business and not to its other businesses.

Thus, the Court *En Banc* is one with the Court in Division when it ruled, to wit:

> "xxx the Court finds that petitioner may claim refund under Section 108(B)(4) of the NIRC of 1997, as amended, which provides:

[8] *En Banc* docket, pp. 45-49.

> 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
>
> (4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof;

This provision must be read in connection with Section 4.108-5(b)(4) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, to wit:

> Sec. 4.108-5. *Zero-Rated Sale of Services.* —
>
> xxx xxx xxx
>
> (b) *Transactions Subject to Zero Percent (0%) VAT Rate* — The following services performed in the Philippines by a VAT-registered person shall be subject to zero percent (0%) VAT rate:
>
> xxx xxx xxx
>
> (4) Services rendered to persons engaged in international shipping or air transport operations, including leases of

> property for use thereof; Provided, however, that the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code starting Feb. 1, 2006;

> **It was established in the assailed Decision that petitioner's (herein respondent) client, A.P. Moller-Maersk A/S, is a non-resident foreign corporation engaged in international shipping that transports container cargoes, including shipments of cargoes to and from the Philippines**. Its "main objects are to carry on shipping, chartering and related business, but it shall be a further object to engage in other transport business, commercial and industrial activities at home and abroad within the scope deemed appropriate by the Board of Directors.
>
> **Consequently, petitioner's sale of services to A.P. Moller-Maersk A/S qualify for zero-rating under Section 108 (B) (4) of the NIRC of 1997, as amended**, and the claimed input taxes attributable thereto may be refunded. (*Boldfacing supplied*)

With regard to petitioner's complaint that respondent was not able to prove that the unutilized input VAT being claimed for refund is attributable to the sale of services to A.P. Moller-Maersk A/S' international shipping business, suffice it to say that the evidence on record shows otherwise. Respondent has sufficiently established its entitlement to the refund or tax credit certificate sought in a much reduced amount of ₱5,829,398.90, representing its unutilized input

VAT attributable to zero-rated sales for June 2009 and the 3rd and 4th quarters of 2009.

The Court in Division is correct in holding that respondent's client, A.P. Moller-Maersk A/S, is engaged in international shipping.

Evidence also reveal that respondent's client, A.P. Moller-Maersk A/S: (1) is a non-resident foreign corporation[9] engaged in international shipping that transports container cargoes, including shipments of cargoes to and from the Philippines;[10] and (2) its "main objects are to carry on shipping, chartering and related business, but it shall be a further object to engage in other transport business, commercial and industrial activities at home and abroad within the scope deemed appropriate by the Board of Directors."[11]

In his *petition* before the Court *En Banc*, petitioner claims that A.P. Moller-Maersk A/S has removed itself from being engaged in international shipping when it engaged in the transport of goods and passengers from a port in the Philippines to another Philippine port. But petitioner offered no evidence to substantiate his claim.

It has been ruled that the one who alleges a fact has the burden of proving it, and a mere allegation is not evidence.[12] Petitioner has the burden to substantiate his allegation that A.P. Moller-Maersk A/S is engaged in the transport of goods and passengers from a port in the Philippines to another Philippine port but utterly failed. Thus, the Court *En Banc* agrees with the Court in Division when it ruled, thus:

> The Court likewise found that petitioner's client A.P. Moller-Maersk A/S is a non-resident foreign corporation engaged in international shipping that transports

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[9] Exhibits "E", *Rollo*, p. 548; and Exhibit "D", *Rollo*, pp. 545-547.
[10] Exhibits "B", *Rollo*, pp. 525-535; Exhibit "C", *Rollo*, pp. 536-544; and Exhibit "BB", *Rollo*, pp. 499-500.
[11] Exhibit "B", *Rollo*, pp. 525-535.
[12] *P.T. Cerna Corporation v. Court of Appeals*, G.R. No. 91622, April 6, 1993.

container cargoes, including shipments of cargoes to and from the Philippines. Thus, petitioner's sales of services to A.P. Moller-Maersk A/S qualify for VAT zero-rating pursuant to Section 108 (B) (4) of the NIRC of 1997, as amended.

WHEREFORE, the *Petition for Review* filed by petitioner Commissioner of Internal Revenue on June 22, 2015 is hereby **DENIED**, for lack of merit. Accordingly, the assailed Amended Decision and Resolution dated March 13, 2015 and May 18, 2015, respectively, are **AFFIRMED** *in toto*.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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

ON LEAVE
LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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