19-000538-0056

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10209

FIRMENICH (PHILIPPINES) INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village, Makati City

ATTY. JOANA Q. BILONGILOT
Bureau of Internal Revenue - Revenue Region No. 8B
2/F, Legal Division
313 Sen. Gil Puyat Avenue, Makati City

CABRERA & COMPANY
28th Floor, Philamlife Tower
8767 Paseo de Roxas
Makati City, Metro Manila

GREETINGS:

You are hereby notified by these presents that on **March 13, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 14, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

FIRMENICH (PHILIPPINES), INC.,	**CTA Case No. 10209**
Petitioner,	Members: **DEL ROSARIO,** *PJ, Chairperson,* **MANAHAN,** and **REYES-FAJARDO,** *JJ.*
- versus -	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** MAR 13 2024, 10:40 AM

x- -x

DECISION

REYES-FAJARDO, J.:

Before the Court is a Petition for Review[1] filed by Firmenich (Philippines), Inc. (Firmenich Philippines) on November 8, 2019 against respondent Commissioner of Internal Revenue (CIR), seeking the refund of the aggregate amount of ₱736,789.52, representing alleged unutilized input value-added tax (VAT) credits relative to the period from July to September of calendar year (CY) 2017.

FACTS

Petitioner Firmenich Philippines is a domestic corporation engaged in the business of selling, marketing, and promoting soap, detergent, perfumes, and preparations, with principal office at the 10th and 11th Floors, Cocolight Building, 39th Street corner 11th Avenue, Bonifacio Global City, Taguig City.[2] It is a VAT-registered entity with Bureau of Internal Revenue (BIR) Taxpayer Identification No. 004-841-520-000, as shown in its Certificate of Registration No. 9RC0000520154 dated July 24, 1996.[3]

---

1 Docket – Vol. 1, pp. 6-19.
2 Exhibits "P-1" to "P-2," Docket – Vol. 2, pp. 846 to 902.
3 Exhibit "P-3," Docket – Vol. 2, p. 903.

Respondent is the head of the BIR, empowered to perform the duties of the office, including acting upon and approving claims for refund or tax credit. Its office address is at the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

Firmenich Philippines has an Agency Agreement[5] with Firmenich Asia Private Ltd., with the address 10 Tuas West Road, Singapore 638377, Republic of Singapore (hereinafter referred to as "Firmenich Singapore"). It was appointed as Firmenich Singapore's **agent representative** to market, promote, and sell Firmenich products in the Philippines. As compensation for its sales support services, Firmenich Philippines receives commissions from Firmenich Singapore. These commissions are recorded as revenues in Firmenich Philippines books.

Tax Returns

1) Output VAT

For July to September of CY 2017, Firmenich Philippines filed its Quarterly VAT Return (BIR Form No. 2550-Q)[6] and reported total sales amounting to ₱41,056,556.11, all of which were declared as zero-rated.[7]

2) Input VAT

On the other hand, it also reported total input VAT amounting to ₱13,607,711.67, broken down as follows:

Input tax carried over from previous periods	Line 20A		₱11,815,769.39
Add: Input tax	Line 20B		601,416.38
On capital goods exceeding ₱1M (unamortized)			
From current transactions:			
On domestic purchases of goods other than capital goods	Line 21F	₱16,119.55	
On domestic purchases of services	Line 21J	1,174,406.35	1,190,525.90
Subtotal	Line 22		₱13,607,711.67
Less: Input tax on capital goods exceeding ₱1M (amortized)	Line 23F		546,118.06
Total available input tax	Line 24		₱13,061,593.61

4 Par. 1(a), Joint Stipulation of Facts and Issues, Docket - Vol. 2, pp. 708-714.
5 Exhibit "P-11" Docket - Vol. 2, pp. 909-918.
6 Exhibit "P-5," Docket - Vol. 2, pp. 904-905.
7 Line 17, Exhibit "P-5," Docket - Vol. 2, p. 904.

There being no VATable sales, Firmenich Philippines yielded a net VAT *overpayment* equal to its total available input tax.

Proceedings before the BIR

On **September 30, 2019**, Firmenich Philippines filed before the BIR Revenue District Office (RDO) No. 44 - Taguig/Pateros an Application for Tax Credits/Refunds (BIR Form No. 1914),[8] claiming a refund amounting to ₱736,789.52, citing Section 112(A) of the Tax Code as legal basis (**administrative claim**).

Petitioner received a BIR Tax Verification Notice dated October 1, 2019,[9] advising it that a revenue officer[10] has been authorized to verify the supporting documents and/or pertinent records relative to its administrative claim.

In a Letter[11] signed by Mr. Ray Anthony O. Geli, **Revenue District Officer**, RDO No. 44, Firmenich Philippines' administrative claim was denied with the following explanation:

> x x x Investigation disclosed that Firmenich Philippines[,] Inc. was appointed as Firmenich Asia's agent representative to market, promote and extend F[i]rm[e]nich products in the Philippines. Your revenue come[s] from commission on all sales made by Firmenich Asia in the Philippines, that have benefited from your sales support and assistance. As stated[,] the case of Internal Revenue vs. Accenture Inc. (GR No. 190102 dated July 11, 2012), the Supreme Court ruled that **"the recipient of services must be doing business outside the Philippines for the transaction to qualify for zero-rating under Section 108(B) of the Tax Code."** Since Firmenich Asia is doing business in the Philippines, you failed to prove the validity of your zero-rated sales and it's tantamount to your failure to prove your entitlement to tax refund.
>
> For your information and guidance.
>
> Very truly yours,
> (Signed.)
> RAY ANTHONY O. GELI
> Revenue District Officer

---

8 Exhibit "P-14," Docket - Vol. 2., p. 923; Par. 1(b), Joint Stipulation of Facts and Issues, Docket - Vol. 2, pp. 708-714.

9 With reference number TVN201800056312, Exhibit "P-17," Docket - Vol. 2, p. 926.

10 Jeffrey Q. Manayam.

11 Exhibit "P-18," Docket - Vol. 2, p. 927.

Firmenich Philippines received a copy of this letter on **October 10, 2019.**[12]

On **November 8, 2019,** Firmenich Philippines filed the instant Petition for Review **(judicial claim)**, alleging among others:

> *Nature and Timeliness of the Petition*
>
> 3. x x x
>
> 4. Hence, on September 30, 2019, petitioner filed its administrative claim for the refund of input VAT amounting to ₱736,789.52 for the period from July 1, 2017 to September 30, 2017 with the Revenue District Office No. 44-Taguig/Pateros of the BIR Revenue Region 8B-South NCR. **However, on October 10, 2019, petitioner received from RDO 44 a letter dated October 3, 2018 denying its application for input VAT refund.**
>
> 5. Under Section 112(C) of the Tax Code, petitioner may file an appeal with this Honorable Court **within 30 days from receipt of the denial of its claim for VAT refund, or until November 9, 2019. Given that November 9, 2019 falls on a Saturday, petitioner has until the next working day, November 11, 2019, to file its appeal.**
>
> **Hence, this Petition.** (Boldfacing supplied)

Meanwhile, in a Letter dated November 26, 2019,[13] Glen A. Geraldino, **Regional Director**, Revenue Region No. 8B - South NCR, denied Firmenich Philippines' claim and explained as follows:

> Investigation conducted relative to your claim revealed that the services rendered by your company in favor of FIRMENICH ASIA PRIVATE LTD. cannot be considered as a transaction subject to zero percent rate pursuant to Section 108(B)(2) of the National Internal Revenue Code (NIRC) x x x
>
> Perusal of the Agency Agreement dated July 1, 1999 between Firmenich Philippines[,] Inc. and Firmenich Asia Private Ltd. Revealed that the latter has been continuously engaged in the pursuit of business in the Philippines with Firmenich Philippines[,] Inc. acting as its agent. Hence, Firmenich Asia Private Ltd. Cannot be considered as non-resident person not engaged in business in the Philippines.

---

[12] Par. 1(b), Joint Stipulation of Facts and Issues, Docket – Vol. 2, pp. 708-714.
[13] Exhibit "P-19," Docket – Vol. 2, p. 928.

In view of the foregoing, your request for Value Added Tax (VAT) Refund is hereby DENIED for lack of legal and factual basis.

For your information and guidance.

Very truly yours,
(Signed.)
GLEN A. GERALDINO
Regional Director

Petitioner received a copy of the above-quoted letter on December 9, 2019.[14]

Proceedings before the Court

The CIR filed its Answer[15] and submitted the BIR Records[16] of the case on June 30, 2020 and December 10, 2020, respectively.

After the parties' submission of their respective pre-trial briefs[17] and the conduct of a pre-trial conference,[18] the Court resolved[19] to approve the parties' Joint Stipulation of Facts and Issues[20] and issued a Pre-Trial Order dated January 29, 2021.[21]

During trial, the following persons testified for Firmenich Philippines: (1) Ms. Emily G. Recto,[22] Senior Finance Manager, Firmenich Philippines; and (2) Ms. Krista V. Bambao,[23] Court-commissioned Independent Certified Public Accountant (ICPA).[24]

---

[14] Exhibit "P-19," Docket – Vol. 2, p. 928.
[15] Docket – Vol. 1, pp. 549-556.
[16] Respondent's *Compliance* dated December 10, 2020, Docket – Vol. 2, pp. 766-767.
[17] For the CIR, see Docket – Vol. 2, pp. 606-609; For Firmenich Philippines, see see Docket – Vol. 2, pp. 660-673.
[18] Notice of Pre-Trial Conference dated July 27, 2020, Docket – Vol. 2, pp. 599-601; Minutes of the hearing held on, and Order dated, October 15, 2020, Docket – Vol. 2, pp. 691-694, and 696-698, respectively.
[19] In a Resolution dated November 20, 2020. Docket – Vol. 2, p. 748.
[20] Docket – Vol. 2, pp. 708-714.
[21] Docket – Vol. 2, pp. 772-779.
[22] Exhibit "P-21", Docket – Vol. 2, pp. 614-627; Minutes of the hearing held on, and Order dated, February 11, 2021, Docket – Vol. 2, pp. 812-814, and 819-820, respectively.
[23] Exhibit "P-22", Docket – Vol. 2, pp. 783-810; Minutes of the hearing held on, and Order dated, February 11, 2021, Docket – Vol. 2, pp. 812-814, and 819-820, respectively.
[24] *Oath of Commission* dated October 15, 2020, Docket – Vol. 2, p. 695; Minutes of the hearing held on, and Order dated, October 15, 2020, Docket – Vol. 2, pp. 691-694, and 696-698, respectively.

The Report of the ICPA was submitted on November 16, 2020.[25]

Firmenich Philippines filed its Formal Offer of Evidence[26] on June 18, 2021. Respondent CIR did not file a Comment thereto.[27] In a Resolution dated November 3, 2021,[28] the Court admitted petitioner's offered exhibit, *except* for the following:

1. Exhibit "P-16", for failure of the document offered and identified to correspond with the document marked; and

2. Exhibits "P-165" to "P-166", for being blurred/unreadable.

Later on, after the Court granted its motion,[29] petitioner was allowed to recall Ms. Emily G. Recto to testify again.[30] In view of this, it filed a Supplemental Offer of Evidence[31] for the admission of Recto's Supplemental Judicial Affidavit. Respondent CIR also did not file a Comment on this matter.[32]

Eventually, the Court also granted[33] petitioner's Motion for Reconsideration (Re: Resolution on the Formal Offer of Evidence dated November 3, 2021) and admitted Exhibits "P-165" and "P-166" as part of Firmenich Philippines' evidence.

For its part, the CIR presented the testimony of Revenue Officer Jeffrey Q. Manayam.[34] Subsequently, the Court also admitted[35] all exhibits offered[36] by the CIR.

---

25 Exhibit "P-23," Docket - Vol. 2, pp. 715-746.
26 Docket - Vol. 2, pp. 837-845.
27 Records Verification dated July 22, 2021 issued by the Judicial Records Division of this Court, Docket - Vol. 2, p. 930.
28 Docket - Vol. 2, pp. 934-936.
29 In a Resolution dated April 4, 2022, Docket - Vol. 2, pp. 958-960.
30 Minutes of the hearing held on, and Order dated, June 2, 2022, Docket - Vol. 2, pp. 970-973-A.
31 Docket - Vol. 2, pp. 974-976.
32 Records Verification dated June 30, 2022 issued by the Judicial Records Division of this Court, Docket - Vol. 2, p. 982.
33 In a Resolution dated August 4, 2022, Docket - Vol. 2, pp. 984-986.
34 Exhibit "R-6", Docket - Vol. 1, pp. 563-568; Order dated October 4, 2022, Docket - Vol. 2, pp. 988-989.
35 In a Resolution dated December 1, 2022, Docket - Vol. 2, pp. 1002-1003.
36 Respondent's *Formal Offer of Evidence*, Docket - Vol. 2, pp. 990-994.

Firmenich Philippines filed its Memorandum.[37] When the CIR did not submit any Memorandum within the time allowed,[38] the case was deemed submitted for decision on March 13, 2023.[39]

Firmenich Philippines' Arguments

The CIR denied Firmenich Philippines' administrative claim for refund, particularly, on its finding that Firmenich Singapore was doing business in the Philippines through Firmenich Philippines as its agent under the Agency Agreement.[40]

Petitioner avers that Firmenich Singapore is not doing business in the Philippines for the following reasons: *First*, Section 3(d) of Republic Act (R.A.) No. 7042 or the Foreign Investments Act of 1991 and Rule I, Section 1(f) of its implementing rules, provide that the phrase "doing business" shall not be deemed to include "appointing a representative or distributor domiciled in the Philippines which transacts business in the representative's or distributor's own name and account."[41] *Second*, Firmenich Singapore does not have full control over Firmenich Philippines. The latter is doing business independently of the former and its affiliates.[42] *Third*, by the definition under the Philippines-Singapore Convention for the Avoidance of Double Taxation (RP-SG DTA), Firmenich Singapore does not have a permanent establishment in the Philippines.[43]

And even if Firmenich Singapore is doing business in the Philippines, petitioner is still entitled to zero-percent VAT. The law does not require that the recipient of a supply of goods or services to be doing business outside the Philippines *exclusively*. As long as the foreign corporation conducts business outside the Philippines, the supply to said enterprise must still be regarded as zero-rated, notwithstanding the foreign corporation's performance of services in the Philippines.[44]

---

[37] Docket – Vol. 2, pp. 1006-1014.
[38] Records Verification dated February 27, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 1015.
[39] Minute Resolution dated March 13, 2023, Docket – Vol. 2, p. 1016.
[40] *Petition for Review*, Docket – Vol. 1, p. 10.
[41] *Petition for Review*, Docket – Vol. 1, p. 11.
[42] *Petition for Review*, Docket – Vol. 1, pp. 12-13.
[43] *Petition for Review*, Docket – Vol. 1, p. 13.
[44] *Petition for Review*, Docket – Vol. 1, pp. 15-16.

Finally, petitioner stresses that it submitted all the documentary requirements under Revenue Memorandum Circular (RMC) No. 47-19[45] in support of its administrative claim. Its full compliance justifies a grant of the refund sought.[46]

The CIR's Arguments

Respondent remains firm that, by virtue of the Agency Agreement, Firmenich Singapore is doing business in the Philippines. Following the Supreme Court's pronouncement in *Accenture, Inc. v. Commissioner of Internal Revenue*,[47] a foreign enterprise's appointment of a local agent indicates such foreign entity's intention to establish a continuous business within a state.[48] Thus, the supply of services to Firmenich Singapore, a foreign enterprise doing business in the Philippines, is disqualified from VAT zero-rating under Section 108(B) of the Tax Code.[49]

ISSUES

Based on the parties' submissions, We restate the issues as follows:

1. Does the Court have jurisdiction to review by appeal the ruling of a BIR Revenue District Officer?

2. Does the supply of services to Firmenich Singapore by Firmenich Philippines, the former's Philippine agent, qualify for zero-rating?

OUR RULING

The Petition for Review is denied for lack of jurisdiction and, in any case, for lack of merit.

---

45 Subject: Revised Guidelines and Mandatory Requirements for the Processing and Grant of Value-Added Tax (VAT) Refund Claims within the 90-day Period Pursuant to Section 112 of the Tax Code of 1997, as Amended, April 16, 2019.
46 *Petition for Review*, Docket - Vol. 1, pp. 17-18.
47 G.R. No. 190102, July 11, 2012, 690 PHIL 679-700.
48 *Answer*, Docket - Vol. 1, p. 553.
49 *Answer*, Docket - Vol. 1, p. 554.

The Court has no jurisdiction to review by appeal the ruling of a BIR Revenue District Officer.

The law[50] vests the Court of Tax Appeals the exclusive appellate jurisdiction to review by appeal **decisions of the CIR in refund cases,** *viz.*:

> SEC. 7. Jurisdiction. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the **Commissioner of Internal Revenue** in cases involving disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue x x x (Emphasis supplied).

Only the CIR is empowered[51] to decide refunds of internal revenue taxes:

> SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases x x x 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 this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is **vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.**" (Emphasis supplied).

The CIR's authority to decide refund cases involving unutilized input VAT attributable to zero-rated sales, in particular, is set out in Section 112 of the Tax Code, to wit:

> SEC. 112. Refunds or Tax Credits of Input Tax. -
>
> x x x
>
> (C) Period within which Refund of Input Taxes shall be Made. - In proper cases, **the Commissioner shall grant a refund for creditable input taxes** within ninety (90) days from the date of submission of the official receipts or invoices and other documents in support of

---

[50] Republic Act No. 1125, as amended by Republic Act No. 9282.

[51] Section 4, Tax Code.

> the application filed in accordance with Subsections (A) and (B) hereof: Provided, That should the Commissioner find that the grant of refund is not proper, the Commissioner must state in writing the legal and factual basis for the denial.
>
> **In case of full or partial denial of the claim for tax refund, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim, appeal the decision with the Court of Tax Appeals**: Provided, however, That failure on the part of any official, agent, or employee of the BIR to act on the application within the ninety (90)-day period shall be punishable under Section 269 of this Code. (Emphasis supplied)

By **exception**, such authority vested in the CIR may be *delegated* "to any or such subordinate officials with the rank equivalent to a division chief or higher, subject to such limitations and restrictions as may be imposed under rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the CIR."[52]

With reference to the processing of VAT refunds, Revenue Memorandum Circular (RMC) No. 17-18[53] provides as follows:

> I. Claims for value-added tax (VAT) refund
>
> A. General Policies
>
> 1. x x x
>
>   x x x
>
> 4. The claims shall be processed based on submitted documents which shall be verified by the assigned Revenue Officer (RO)/Group Supervisor (GS). This process shall not be construed as an audit/investigation; hence, the taxpayer-claimant may be issued subsequently a Letter of Authority (LA) by the VAT Audit Section (VATAS) in the Regional Assessment Division or the investigating office having jurisdiction over the taxpayer-claimant.

---

[52] Section 7, Tax Code; *Commissioner of Internal Revenue v. Hedcor Sibulan, Inc.*, G.R. No. 209306 (Resolution), [September 27, 2017, 818 PHIL 971-980; *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113 & 197156 (Resolution), October 8, 2013, 719 PHIL 137-205.

[53] Subject: Amending Revenue Memorandum Circular (RMC) No. 89-2017 and Certain Provisions of RMC No. 54-2014 Regarding the Processing of Claims for Issuance of Tax Refund/Tax Credit Certificate (TCC) in Relation to Amendments Made in the National Internal Revenue Code of 1997, as Amended by Republic Act No. 10963, Known as the Tax Reform for Acceleration and Inclusion (TRAIN) (February 27, 2018).

5. Any findings in the course of the verification/review of the VAT claims that may lead to a deficiency in internal revenue taxes, other than VAT, shall be communicated by the processing/reviewing office to the concerned investigating office having jurisdiction over the taxpayer-claimant. However, if the findings involve VAT, these may result to disallowance or denial of the claim, or if the case warrants, for possible assessment of VAT liability.

   Should the claim be for denial, such fact should be communicated in writing to the taxpayer within the 90-day period. The denial letter shall be signed by the Commissioner (CIR)/Deputy Commissioner-Operations Group (DCIR-OG)/Assistant Commissioner (ACIR)/Regional Director, as the case may be x x x

C. Claims for VAT refund by other zero-rated taxpayers, indirect exporters and claims filed in accordance with Sec. 112 (B) of Tax Code, as amended by R.A. No. 10963

1. All claims for VAT refund by other zero-rated taxpayers, indirect exporters and claims filed in accordance with Sec. 112 (B) of the Tax Code, as amended, shall be filed with and processed by the concerned Revenue District Office and LT Audit Division having jurisdiction over the taxpayer-claimant.

2. The docket with report on said claims shall be reviewed by the Assessment Division/Office of the Head Revenue Executive Assistant (HREA), and shall be subject to approval/disapproval by the Regional Director/ACIR-LTS, as the case may be, irrespective of amount.

x x x

III. Time frame to process claims for VAT claims under Sections 112 (A) and (B) of the Tax Code, as amended further by R.A. No. 10963

1. The 90-day period prescribed under 112(C) of the Tax Code, as amended, shall start from the actual date of filing of the application with complete documents duly received by the processing office.

2. The 90-day period shall be applied prospectively, i.e., for claims filed upon the effectivity of R.A. No. 10963.

3. The following time frame shall be strictly adhered to by the processing, reviewing and approving offices:

   Time Frame to Verify/Process, Review and Approve/Disapprove the Claim x x x

Regional Cases	No. of Days from Receipt of Application
Verification/processing RDOs)	60
Review (Assessment Division))	20
Approval by Regional Director	10
Total No. of Days	90

4. The concerned revenue officers/officials shall act on the recommended claims in accordance with the abovementioned time frame, including VAT claims on importations." (Emphases and underscoring added)

Based on the above-quoted issuance, refund applications concerning input VAT attributable to zero-rated sales shall be filed before the RDO having jurisdiction over the taxpayer-claimant. The procedure by which the BIR shall process VAT refund applications may be outlined as follows:

Task	Authorized Official
1. Verification of supporting documents submitted by claimant	Revenue Officer and Group Supervisor of the RDO concerned.
2. Review of the results of/ report on verification procedures	Assessment Division/Office of the Head Revenue Executive Assistant (HREA)
3. Approval of Assessment Division/ HREA's report/ recommendation	Regional Director
4. Issuance of denial letter, if warranted	CIR or Deputy Commissioner-Operations Group (DCIR-OG)/Assistant Commissioner (ACIR)/Regional Director

To be sure, RDO officials are tasked to verify the documents supporting the claim but are not so authorized to give a final decision on the refund application. In the present case: (a) Firmenich Philippines filed its administrative claim before RDO No. 44. (b) It received a letter from Mr. Ray Anthony O. Geli, **Revenue District Officer**, RDO No. 44, denying the administrative claim. (c) It filed the instant petition expressly[54] to appeal the denial given by Revenue District Officer Geli.

To underscore, the CIR's power to decide VAT refund cases was never delegated to RDO officials. Revenue District Officer Geli's letter denying Firmenich's refund is, at best, merely recommendatory, subject to the approval of the CIR or Regional Director. It is not

---

[54] As averred in Paragraph 4 of the *Petition for Review* (Docket - Vol. 1, p. 8) and reiterated in Paragraphs 4 to 7 of petitioner's *Memorandum* (Docket - Vol. II, p. 1007 to 1008).

appealable to this Court. Such erroneous appeal must be dismissed,[55] whether upon motion or *motu proprio*.[56]

Jurisdiction is conferred by law and determined by the allegations in the initiatory pleading.[57] Notably, ***after* filing the instant petition** but prior to the service of the CIR's Answer, Firmenich Philippines received the Regional Director's denial letter. However, it did not amend the allegations contained in the petition, if only to conform to the events supervening its original filing and, at least, to correct its deficient jurisdictional facts.

At any rate, even if We disregard the foregoing, We still find that Firmenich Philippines is not entitled to the refund or credit sought.

Firmenich Philippines' supply of services to Firmenich Singapore cannot be regarded as zero-rated.

The present claim for refund/credit is anchored on Section 112(A)[58] of the Tax Code. The Supreme Court, in the recent case of *Chevron Holdings, Inc. v. Commissioner of Internal Revenue (Chevron)*,[59] reiterated the requisites for the availment of a tax credit/refund under the aforementioned provision:

---

[55] Rule 50, Section 1(i), Rules of Court, in relation to Rule 1, Section 3, 2005 Revised Rules of the Court of Tax Appeals; *Mitsubishi Motors Phils. Corp. v. Bureau of Customs*, G.R. No. 209830, June 17, 2015, 760 PHIL 954-964.

[56] In *Non, et al. v. Office of the Ombudsman, et al.*, G.R. No. 251177, September 8, 2020, the Supreme Court pronounced: "[w]hen a case is filed with a court which has no jurisdiction over the action, the court shall motu proprio dismiss the case." *Silicon Phils., Inc. v. Commissioner of Internal Revenue*, G.R. No. 173241, March 25, 2015, in relation to Rule 9, Section 1 of the Rules of Court.

[57] *Commissioner of Internal Revenue v. Court of Tax Appeals* (First Division), G.R. Nos. 210501, 211294 & 212490, March 15, 2021.

[58] SECTION 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 or 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. x x x

[59] G.R. No. 215159, July 5, 2022.

> Under Section 112(A) of the Tax Code, the taxpayer may claim for refund or issuance of tax credit certificate of unutilized input VAT attributable to zero-rated sales subject to the following conditions: (1) the taxpayer is VAT-registered; **(2) the taxpayer is *engaged* in zero-rated or effectively zero-rated sales;** (3) the claim must be filed within two (2) years after the close of the taxable quarter when such sales were made; and (4) the creditable input tax due or paid must be attributable to such sales, except the transitional input tax, to the extent that such input tax has not been applied against the output tax. (Emphasis supplied)

Firmenich Philippines claims that the services it rendered to Firmenich Singapore is zero-rated on account of Section 108(B)(2) of the Tax Code, which provides that sales of services **other than those specified in Section 108(B)(1),** nonetheless, may qualify for VAT zero-rating, if the requisites as discussed by the Supreme Court in *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd.*[60] concur, *viz*:

> Conditions for Zero-rating of
> Sales of Services
>
> Zero-rated sales are, for all intents and purposes, subject to VAT, only that the rate imposed upon them is 0%. Thus, while these sales will not mathematically yield output VAT, the input VAT arising therefrom is nonetheless creditable or refundable, as the case may be.
>
> Sales of "other services," such as those qualifying services rendered by DKS to its foreign affiliates-clients, shall be zero-rated pursuant to Section 108 (B)(2) of the Tax Code if the following conditions are met: *First,* the seller is VAT-registered. ***Second,* the services are 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."** *Third,* the services are "paid for in acceptable foreign currency and accounted for in accordance with [BSP] rules and regulations."
>
> x x x
>
> Proof of NRFC Status
>
> For purposes of zero-rating under Section 108 (B)(2) of the Tax Code, the claimant must establish the two components of a client's NRFC status, *viz.*: **(1) that their client was established under the**

[60] G.R. No. 234445, July 15, 2020.

> **laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, there must be sufficient proof of both of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.** (Boldfacing supplied)

On the one hand, We accept that the Consularized or Authenticated Certificate of Incorporation[61] issued by the Accounting and Corporate Regulatory of Singapore establishes that Firmenich Singapore is a foreign corporation (*first component*). However, the Certificate of Non-Registration[62] dated September 19, 2019 issued by the Philippine Securities and Exchange Commission does not demonstrate conclusively that Firmenich Singapore is *not* doing business in the Philippines (*second component*).

Firmenich Singapore might not be registered in the Philippines. However, the **Agency Agreement** between Firmenich Singapore and petitioner Firmenich Philippines allows the former to transact or engage in local trade or business through the latter.

The nature of the relationship between a principal and its agent was explained by the Supreme Court in *Country Bankers Insurance Corp. v. Keppel Cebu Shipyard*:[63]

> In a contract of agency, a person, the agent, binds himself to represent another, the principal, with the latter's consent or authority. Thus, agency is based on representation, where the agent acts for and in behalf of the principal on matters within the scope of the authority conferred upon him. **Such "acts have the same legal effect as if they were personally done by the principal. By this legal fiction of representation, the actual or legal absence of the principal is converted into his legal or juridical presence."** (Emphasis supplied)

Thus, a foreign principal may operate or conduct business locally through the appointment of a Philippine agent. However, Firmenich Philippines denies its principal's Philippine presence, notwithstanding the Agency Agreement, by citing Section 3(d) of the Foreign Investments Act of 1991, *viz.*:

---

[61] Exhibit "P-12," Docket - Vol. 2, pp. 919-922.
[62] Exhibit "P-13," BIR Records - Folder No. 2, p. 719.
[63] G.R. No. 166044, June 18, 2012, 688 PHIL 78-104.

ad

> 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 totalling 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** x x x

Petitioner argues that the above-cited definition removes a foreign entity's appointment of a Philippine representative (e.g., Agency Agreement) from the ambit of the definition of "doing business in the Philippines."

This position fails to convince the Court. The Supreme Court's pronouncement in *Air Canada v. Commissioner of Internal Revenue (Air Canada)* [64] is instructive:

> While Section 3(d) above states that "appointing a representative or distributor domiciled in the Philippines which transacts business in its own name and for its own account" is not considered as "doing business," the Implementing Rules and Regulations of Republic Act No. 7042 clarifies that "doing business" includes "appointing representatives or distributors, operating under full control of the foreign corporation, 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[.]" (Emphasis omitted)

In *Air Canada*, a foreign enterprise nominated a local agent. It was not established that the agent solicited orders on its own or otherwise acted independently without direct instruction from the foreign entity, as the principal. Hence, the Supreme Court ruled:

---

[64] G.R. No. 169507, January 11, 2016, 776 PHIL 119-166.

♂

> Aerotel performs acts or works or exercises functions that are incidental and beneficial to the purpose of petitioner's business. The activities of Aerotel bring direct receipts or profits to petitioner. There is nothing on record to show that Aerotel solicited orders alone and for its own account and without interference from, let alone direction of, petitioner. On the contrary, Aerotel cannot "enter into any contract on behalf of [petitioner Air Canada] without the express written consent of [the latter,]" and it must perform its functions according to the standards required by petitioner. Through Aerotel, petitioner is able to engage in an economic activity in the Philippines.[65]

Similar to *Air Canada*, We observe the following: *First*, in the subject VAT return, Firmenich Philippines declared that it generated sales amounting to ₱41,056,556.11 for the period July 1, 2017 to September 30, 2017, all of which were zero-rated.[66] *Second*, the zero-rated sales so declared "were all derived from fees collected for the provision of service to Firmenich Asia Pte. Ltd."[67] *Third*, based on its Statements of Income for the years ended June 30, 2018 and 2017,[68] Firmenich Philippines only source of revenues were the commissions paid to it by Firmenich Singapore.[69] *Fourth*, petitioner did not report any merchandise inventory or inventory purchases in its Audited Financial Statements.

We find these circumstances contradictory to petitioner's claim that it is independent from Firmenich Singapore. That Firmenich Philippines generates revenues solely from commissions paid by Firmenich Singapore pursuant to the Agency Agreement indicates that its operations are entirely dependent on the latter. That it does not even maintain its own merchandise inventory negates the theory that it enters into sales agreements on its own. Through petitioner as its agent, Firmenich Singapore is able to engage in economic activity in the Philippines. Thus, Firmenich Philippines' sales of services to Firmenich Singapore cannot be regarded as zero-rated.

That the law *does not deem* as "doing business" the appointment of a Philippine representative or a distributor indicates that Section 3(d) of the Foreign Investments Act of 1991 only gives rise to a disputable presumption; such that the mere act of having a local agent

---

[65] *Id.*
[66] Line 17, Exhibit "P-5," Docket – Vol. 2, p. 904.
[67] Exhibit "P-21," *Judicial Affidavit of Emily G. Recto*, Q&A No. 19, Docket – Vol. 2, p. 620.
[68] Exhibit "R-3," *Audited Financial Statements*, BIR Records – Folder No. 2, p. 761.
[69] Note 12 of the Audited Financial Statements, BIR Records – Folder No. 2, p. 750.

Certainly, this is overturned when there is evidence showing that the foreign entity ably carries out its enterprise in the Philippines through a Philippine agent.

To be sure, input VAT shall be refunded under Section 112(A) of the Tax Code only when it is unutilized *and* attributable to zero-rated sales. However, as things stand, petitioner has failed to establish that it engaged in zero-rated sales. Without zero-rated sales, the attribution requirement relative to its input VAT was not met as well.

Finally, there is no merit in Firmenich Philippines' theory that its full compliance with the documentary requirements under Revenue RMC No. 47-19 justifies a grant of the refund sought. "[W]hether the claimant's submissions 'are actually complete as required by law — is for the CIR and the courts to determine.' The CIR and courts' subsequent evaluation of the documents is a substantive determination of completeness, for the purpose of ascertaining the claimant's entitlement to the tax refund or credit sought."[70] In any case, We no longer find it necessary to proceed with such evaluation in view of the Court's lack of jurisdiction over petitioner's erroneous appeal, as discussed above.

WHEREFORE, in light of the foregoing considerations, the Petition for Review is **DENIED** for lack of jurisdiction and, at any rate, on account of insufficiency of evidence.

SO ORDERED.

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

---

[70] *Supra*, Note 60.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CATHERINE T. MANAHAN
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