REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

AMADEUS MARKETING PHILIPPINES, INC., Petitioner,	**CTA CASE NO. 9441**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson, and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 0 5 2019 3:05 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution are the following:

1. respondent's **Motion for Partial Reconsideration**, filed through registered mail on May 16, 2019 and received by the Court on May 23, 2019, with petitioner's **Comment/Opposition (To Respondent's Motion for Partial Reconsideration dated May 16, 2019)**, filed on June 13, 2019; and

2. petitioner's **Motion for Reconsideration**, filed through registered mail on May 17, 2019 and received by this Court on May 23, 2019, without respondent's comment as per Records Verification dated June 18, 2019.

Both motions seek for the reconsideration of the Court's Decision promulgated on April 30, 2019, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner the reduced amount of **₱2,616,481.61**, representing its excess and unutilized input VAT attributable to zero-rated sales for the four quarters of TY 2014.
>
> **SO ORDERED**."

Respondent's Motion for Partial Reconsideration

Respondent claims that the issue in this case has been resolved already by this Court sitting *En Banc*, denying petitioner's claim for refund for failure to show that it was engaged in zero-rated or effectively zero-rated sales.

Respondent maintains that for petitioner to qualify as VAT zero-rated under Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, its supply of services must satisfy the requisite that the recipient of services is doing business outside the Philippines, among others.

In invoking the Court *En Banc's* ruling in CTA EB Case No. 1532 dated April 5, 2018, respondent insists that by entering into the ACO Agreement as early as August 13, 1997 with petitioner, Amadeus IT Group S.A. clearly intended to establish a continuous business in the the Philippines, thus, services rendered by petitioner to its customer Amadeus IT Group S.A. cannot qualify for VAT zero-rating.

On the other hand, petitioner states that the fact of doing business outside the Philippines should be supported by at least both the incorporation documents and Securities and Exchange Commission (SEC) negative certification, citing as basis several cases decided by the Court of Tax Appeals. 𝓎

Petitioner in this case allegedly presented the SEC certificate of non-registration of corporation/partnership and certificate/articles of foreign incorporation/association/registration of Amadeus IT Group S.A., which are sufficient to prove that an entity is considered a non-resident foreign corporation doing business outside the Philippines.

After review of the foregoing arguments, the Court finds respondent's motion bereft of merit.

To reiterate the Court's findings in the assailed Decision, petitioner was able to prove that its client, Amadeus IT Group SA, is a non-resident foreign corporation doing business outside the Philippines, as evidenced by the Authenticated Articles of Association,[1] as well as, the printout screenshot of the website of Comision Nacional de Mercado de Valores (CNMV), Spain's National Securities Market Commission,[2] and the Philippine Securities and Exchange Commission (SEC) Certificate of Non-Registration[3] of the latter.

It must be noted that the Court cannot outright adopt the findings of the Court *En Banc* in CTA EB Case No. 1532 dated April 5, 2018 since the said case and the instant case have different factual circumstances as the same involves different taxable periods[4]. The Court likewise notes that the decisions of this Court are not binding precedents as was held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. San Roque Power Corporation,*[5] to wit:

> "xxx Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court (Supreme Cout) constitute binding precedents, forming part of the Philippine legal system. xxx"

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1 Exhibit "P-6", docket, vol. II, pp. 742-763.
2 Exhibit "P-8", docket, vol. II, p. 768.
3 Exhibit "P-5", docket, vol. II, p. 741.
4 CTA EB Case No. 1532 involves the taxable year 2010 while the instant case involves the taxable year 2014.
5 G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

Since the decision of this Court is not considered a binding precedent, the Court *En Banc's* ruling in CTA EB No. 1532 has no binding effect and cannot automatically be applied to this case. Thus, the promulgation of the said CTA *En Banc* decision invoked by respondent could not be the basis for the reversal of the Court's Decision in the instant case.

Petitioner's Motion for Reconsideration

Petitioner interposed the following grounds in its Motion for Reconsideration:

I. The Honorable Court erred in disallowing the zero-rated sales of Petitioner amounting to ₱36,202,475.38.

II. The Honorable Court erred in deducting ₱10,053,835.84 to the valid excess input VAT attributable to zero-rated sales of Petitioner.

I. The Honorable Court erred in disallowing the zero-rated sales of Petitioner amounting to ₱36,202,475.38.

In the assailed Decision, the Court disallowed petitioner's zero-rated sales in the aggregate amount of ₱36,236,457.48. Out of the said aggregate amount, ₱36,202,475.38 was disallowed by the Court for petitioner's failure to prove the receipt of its inward remittance.

Petitioner points out that as testified by its witness, Myra Luna Davalos in her Judicial Affidavit dated March 8, 2017 (Exhibit "P-70"), the services rendered were paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP), as shown in the proof of inward remittances issued by the Hong Kong and Shanghai Banking Corporation (HSBC) and the VAT zero-rated official receipts issued by petitioner for said remittances. *Je*

Petitioner insists that the disallowance by the Court has no basis as all the inward remittance for the taxable year (TY) 2014 were properly supported by Exhibits "P-57" to "P-68" and the Certificate of Inward Remittances issued by HSBC marked as Exhibit "P-10".

The Court is not convinced.

As held in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[6], one of the requisites in order for the supply of services to be VAT zero-rated under Section 108(B)(2) of the NIRC of 1997, as amended, is that the payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations.

Section 108(B)(2) of the NIRC of 1997, as amended, 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.* – 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)."

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

In its Quarterly VAT Return for the 4th quarter of TY 2014, petitioner declared total zero-rated sales of ₱100,451,232.42,[7] with dollar equivalent of US$2,257,515.24, as shown in petitioner's Exhibit "P-94-12", to wit:

	Zero-Rated Sales in PhP	Exchange Rate	Zero-Rated Sales in US$
October	21,447,474.13	44.79	478,821.00
November	23,408,234.78	45.01	520,018.00
December	55,595,523.51	44.17	1,258,676.24
Total	**100,451,232.42**		**2,257,515.24**

Meanwhile, records show that the zero-rated sales pertaining to the months of October and November of TY 2014 were duly supported by billing invoices[8], official receipts[9] and Certificate of Inward Remittance issued by HSBC.[10]

Contrary to petitioner's allegation, only the following zero-rated sales were supported by billing invoices and official receipts for the month of December 2014, to wit:

Particulars per Official Receipts	Exhibit No.	Billing Invoice Amount	Exhibit No.	OR Amount
Distribution Fee for December 2014	P-56	US$ 537,702.41	P-66	US$ 439,059.41
Marketing Fee for December 2014	P-44	51,357.00		
Distribution Fee (Offset against loan payment and loan)			P-68	302,301.24

Moreover, a revisit of the Certificate of Inward Remittance issued by HSBC[11] shows that only the amount of US$439,049.41 (net of USD10 bank charge) was received by the bank and was credited to the bank account of petitioner.

Considering that petitioner reported in its Quarterly VAT Return for the 4th quarter of TY 2014 a total amount of ₱100,451,232.42, which included the amount of ₱55,595,523.51 with dollar equivalent of US$1,258,676.24, but only the amount of US$439,049.41 was certified by the bank as inwardly remitted and credited to petitioner's bank account, the remaining amount of US$819,616.83 *Jc*

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7 Line 17 of Exhibit "P-20", docket, vol. II, p. 783.
8 Exhibits "P-42", "P-43", "P-54" and "P-55", docket, vol. II, pp. 824, 825, 836 and 837.
9 Exhibits "P-64" and "P-65", docket, vol. II, pp. 846-847.
10 Exhibit "P-10", docket, vol. II, p. 769 (dates of remittances were December 22, 2014 and January 22, 2015).
11 Exhibit "P-10", docket, vol. II, p. 769 (date of remittance was February 20, 2015).

(US$1,258,676.24 less US$439,059.41) with peso equivalent of ₱36,202,475.38 (US$819,616.83 x ₱44.17) should be disallowed by the Court for petitioner's failure to prove the receipts of its inward remittance.

Without any convincing evidence to disprove our findings which are based on the pieces of evidence presented by petitioner, there is no reason for the Court to disturb its original findings per assailed Decision.

II. The Honorable Court erred in deducting ₱10,053,835.84 to the valid excess input VAT attributable to zero-rated sales of Petitioner.

In the assailed Decision, the Court held that:

> "Here, although petitioner carried over the claimed input VAT of ₱16,939,138.14, which includes the excess input VAT credit of ₱12,670,317.45, to the succeeding quarters up to the first quarter of TY 2016, the same was deducted as 'VAT Refund/TCC Claimed' in the first quarter of taxable year 2016. As such, the subject claim should no longer form part of the excess input VAT of ₱84,006,802.68 as of the end of the first quarter of TY 2016, which was to be carried over to the next succeeding second quarter of TY 2016.
>
> Notice, however, that in its Amended Quarterly VAT Return for the second quarter of TY 2016, petitioner reflected the amount of ₱94,060,638.52 as input tax carried over from previous period, which is ₱10,053,835.84 higher than what petitioner was supposed to carry over. Apparently, part of the subject claim was actually carried over to the next second quarter of TY 2016. Consequently, the valid excess input VAT attributable to zero-rated sales shall be reduced by ₱10,053,835.84. Accordingly, the excess input VAT

available for refund or TCC amounts to ₱2,616,481.61 (₱12,670,317.45 less ₱10,053,835.84)."[12]

Petitioner asserts that when it deducted the amount of claim as reflected in Line 23D of the 4th Quarterly VAT Return of 2015, it has already complied with the requirement of the law.

To support its allegation, petitioner cites Section 112(A) of the NIRC of 1997, which states:

> "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 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: *Provided, finally,* That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero rated sales."

According to petitioner, what the law requires is that the amount being claimed for VAT refund which is due or paid that are attributable to the zero-rated sales should not be applied against the

[12] Assailed Decision, p. 16.

output tax. Petitioner claims that it completed this requirement when it deducted the amount being claimed to the 4th quarter VAT return of 2015. When the amount of ₱16,393,138.14 was reflected in Line 23D, *i.e.*, "VAT Refund/TCC claimed", petitioner already satisfied the requirement of the law.

Petitioner maintains that its subsequent act of carrying forward ₱94,060,628.52 instead of ₱84,006,802.68 is not relevant to the issue of VAT refund claim of petitioner. It must allegedly be noted that the additional ₱10,053,835.84 that was carried over is not the amount being refunded. This amount is not the same amount being claimed by petitioner. This increased amount must be referring to different items which are proper adjustments for the increase in the input tax carry-over. The Court cannot assume that petitioner returned part of what it has already deducted as a claim for VAT refund in Line 23D of the 4th Quarter of 2015 VAT return.

Petitioner further asserts that the Court has no power to assess.

According to petitioner, it is not within the power of the Court to inquire on the amount of ₱10,053,835.84. Petitioner claims that it must be subjected to audit to properly explain the nature of the additional ₱10,053,835.84 in the carry-over of input tax. The Court cannot unilaterally conclude that it is the amount being claimed for refund since the same was already deducted in line 23D of the VAT Return.

Petitioner's allegations are untenable.

It must be clarified that the Court did not assess petitioner but, instead, disallowed a portion of the refundable amount for its failure to present evidence that would explain the differences between the overpayment reflected on the Amended 4th Quarterly VAT Return of TY 2015 in the amount of ₱81,074,184.74[13] and the input tax carry-over per Amended 1st Quarterly VAT Return of TY 2016 in the amount of ₱90,992,770.02,[14] and then the overpayment reflected on the Amended 1st Quarterly VAT Return of TY 2016 in the amount of

[13] Line 29 of Exhibit "P-29", docket, vol. II, p. 802.
[14] Line 20A of Exhibit "P-120".

₱84,006,802.68[15] and the input tax carry-over per Amended 2nd Quarterly VAT Return of TY 2016 in the amount of ₱94,060,638.52.[16]

To illustrate:

	4th Quarter 2015 (Amended)	1st Quarter 2016 (Amended)	2nd Quarter 2016 (Amended)
	P-29	*P-120*	*P-122*
Vatable Sales/Receipts	₱ 2,472,257.32	₱ 209,519.44	₱ 3,879,597.41
Zero-Rated Sales/Receipts	69,319,344.46	84,857,885.55	100,598,522.60
Total Sales/Receipts	**₱ 71,791,601.78**	**₱ 85,067,404.99**	**₱ 104,478,120.01**
Output tax due	**₱ 296,670.88**	**₱ 25,142.33**	**₱ 465,551.69**
Less: Allowable Input Tax			
From Previous Quarter	86,191,868.57	90,992,770.02	94,060,638.52
Deferred on Capital Goods Exceeding ₱1 Million from Previous Quarter	1,819,105.76	1,090,589.75	1,761,240.27
Transitional Input Tax	7,168,391.89	6,871,721.01	6,620,305.48
Total	*₱ 95,179,366.22*	*₱ 98,955,080.78*	*₱ 102,442,184.27*
Current transactions			
Purchase of Capital Goods not exceeding ₱1M	210,869.64	14,260.71	80,429.39
Purchase of Capital Goods exceeding ₱1M	-	933,251.14	268,166.93
Domestic Purchase of Goods other than Capital Goods	122,209.17	188,529.92	598,336.70
Domestic Purchase of Services	4,191,821.57	2,641,200.88	4,736,934.37
Total Current	*₱ 4,524,900.38*	*₱ 3,777,242.65*	*₱ 5,683,867.39*
Total Available Input Tax	₱ 99,704,266.60	₱ 102,732,323.43	₱ 108,126,051.66
Less: Deductions from input tax			
Input tax deferred for the succeeding period	₱ 1,394,272.84	₱ 1,761,240.28	₱ 1,699,146.22
VAT Refund/TCC Claimed	16,939,138.14	16,939,138.14	-
Others	-	-	-
Total	₱ 18,333,410.98	₱ 18,700,378.42	₱ 1,699,146.22
Total Allowable Input Tax	₱ 81,370,855.62	₱ 84,031,945.01	₱ 106,426,905.44
Net VAT Payable	₱ (81,074,184.74)	₱ (84,006,802.68)	₱ (105,961,353.75)
Less: Tax Credits/Payments	-	-	
Total Overpayment	**₱ (81,074,184.74)**	**₱ (84,006,802.68)**	**₱ (105,961,353.75)**

Notwithstanding that petitioner deducted the claimed amount of ₱16,939,138.14 from its amended 4th Quarterly VAT Return of TY 2015 and amended 1st Quarterly VAT Return of TY 2016, it, however, did not explain why it carried over to the immediately succeeding quarter an amount different from the supposed excess input VAT for the quarter, *i.e.*, it carried over to the succeeding 1st quarter of 2016 the amount of ₱90,992,770.02 instead of the amount of

[15] Line 29 of Exhibit "P-120".
[16] Line 20A of Exhibit "P-122".

₱81,074,184.74, while, the amount of ₱94,060,638.52 instead of the amount of ₱84,006,802.68 to the succeeding 2nd quarter of 2016.

It is noteworthy that a claim for tax refund is in the nature of tax exemption. Laws granting tax exemption are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power. Taxation is the rule and exemption is the exception. The law does not look with favor on tax exemptions and he who thus seeks to be privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted[17]. Petitioner has the burden of proof to establish the factual basis of its claim for tax refund. This, petitioner failed to do.

Thus, considering that petitioner reflected the amount of ₱94,060,638.52 as input tax carried over from previous period[18] on its latest Amended Quarterly VAT Return for the 2nd quarter of TY 2016, which is ₱10,053,835.84 higher than what petitioner was supposed to carry over, we deemed it proper to reduce by ₱10,053,835.84 the substantiated input VAT attributable to its valid zero-rated sales.

In view of the foregoing, the Court likewise finds petitioner's motion for reconsideration devoid of merit.

WHEREFORE, finding no cogent reason to reverse the findings of the Court in the assailed Decision dated April 30, 2019, respondent's **Motion for Partial Reconsideration** and petitioner's **Motion for Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

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

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[17] *Sea-Land Service, Inc. vs. Court of Appeals, et al.*, G.R. No. 122605, April 30, 2001.
[18] Line 20A of Exhibit "P-122".

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice