REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

IBEX PHILIPPINES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9802

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

OCT 07 2021 11:30 am

x - x

RESOLUTION

MANAHAN, J.:

Submitted before this Court is petitioner's **Motion for Reconsideration (of the Decision promulgated on 18 November 2020)** filed on December 28, 2020, without respondent's comment, pursuant to the Resolution dated June 16, 2021.

On November 18, 2020, this Court promulgated a Decision denying petitioner's claim for refund of zero-rated input value-added tax (VAT) for failing to sufficiently establish that its sales of services qualify for VAT zero-rating, the dispositive portion of which states:

> "**WHEREFORE**, in the light of the foregoing considerations, the instant *Petition for Review* is **DENIED** for lack of merit.
>
> **SO ORDERED**."

In its Motion, petitioner primarily urges the Court to take a second hard look into the established facts, evidentiary rules, and jurisprudence on the matter which were not considered in the Decision. Petitioner posits that it is entitled to the claimed refund based on the following grounds, *viz.*:

I. The evidence on record, respondent's own actions, and the Rules of Evidence establish that petitioner performs its call center services in the Philippines.

II. There is preponderance of evidence to support the grant of petitioner's refund claim.

As to the first ground, petitioner contends that the evidence on record sufficiently establishes the fact that petitioner's services to its non-resident foreign clients are performed in the Philippines and are not in the nature of *"processing, manufacturing, or repacking of goods."* Petitioner insists that its Articles of Incorporation, Bureau of Internal Revenue (BIR) Registration, VAT Returns, official receipts, certificates of inward remittances, and official receipts and invoices from its purchases, are sufficient proof that petitioner is performing call center services in the Philippines. Also worth mentioning is that respondent never disputed during trial that petitioner is performing call center services in the Philippines.

With regard to the second ground, petitioner asserts that only a preponderance of evidence is the quantum needed to grant a claim for tax refund arising out of VAT zero-rated transactions.

This Court finds petitioner's Motion for Reconsideration bereft of merit.

To recapitulate, Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, and as expounded by jurisprudence, the following elements must be present for a sale or supply of services be subjected to the VAT rate of zero percent (0%), to wit:

1) The recipient of the services is a foreign corporation, and the said corporation is doing business *outside* the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services are performed.

2) **The services fall under any of the categories under Section 108(B)(2), or simply, the services rendered should be other than *"processing, manufacturing or repacking goods"*;**

3) **The service must be performed in the Philippines by a VAT-registered person**; and

4) The payment for such services should be in acceptable foreign currency accounted for in accordance with BSP rules.

Again, in the present case, petitioner failed to comply with the **second** and **third** requisites. Petitioner was not able to establish that the services provided to IBEX Global Bermuda Ltd. are not in the same category as *"processing, manufacturing or repacking goods"*. Likewise, petitioner failed to show proof that the purported services rendered to IBEX Global Bermuda Ltd. were performed in the Philippines.

In the case of *General Motors Automobiles Philippines Inc. v. Commissioner of Internal Revenue (CTA Case 8976, December 2, 2016)*, this Court held that the *Service Agreements* presented by petitioner therein was sufficient to prove that it indeed rendered services to its affiliates, including, among others, consultancy and administrative services. As such, it can be gleaned therein that the second requisite can be complied by simply presenting the service agreements between the domestic corporation and the nonresident foreign corporation, which reflects the nature of the services to be rendered by the domestic corporation.

Meanwhile, in the recent case of *Pilipinas Kyohritsu, Inc. v. Commissioner of Internal Revenue (CTA Case No. 9757, July 6, 2021)*, this Court further explained that with regard to the second and third essential elements, the *Engineering Service Agreement* made by and between petitioner and SWS-Japan, which was offered in evidence and admitted by the Court, was able to show that petitioner has rendered services to SWS-Japan for the input and maintenance of designing data of automotive wiring harnesses. Unfortunately, however, **the agreement does not state whether the services were exclusively performed in the Philippines**, or part of the services were performed in the place where SWS-Japan was located.

More so, in the CTA en banc case of *Maxima Machineries, Inc. v. Commissioner of Internal Revenue (CTA EB No. 2282, dated June 29, 2021)*, the Court ruled as follows:

> "With respect to Bomag Fayat Group, petitioner presented an SEC Certification of Non-Registration of Company and the duly authenticated Articles of Incorporation of Bomag Fayat Group. It, however, failed to offer any evidence to prove the kind of services it rendered to Bomag Fayat Group that would qualify as zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended. Other than the allegation that it rendered services for which it received indent commissions, **no proof of any contract or service agreement was adduced by petitioner**. Hence, the Court *En Banc* is unable to verify whether any service other than 'processing, manufacturing or repacking of goods' was rendered by petitioner in the Philippines in favor of Bomag Fayat Group. Thus, petitioner's sales to the Bomag Fayat Group shall not also be considered as zero-rated sales." *(Emphasis Supplied)*

Consistent with the foregoing, this Court finds that petitioner failed to produce evidence to prove the kind of services it rendered to IBEX Global Bermuda Ltd. that would qualify as zero-rated sales under Section 108(B)(2) of the NIRC of 1997, as amended. **No proof of any contract or service agreement** was adduced by petitioner other than the bare allegations of its witness. Hence, **the Court cannot verify whether any service other than "processing, manufacturing or repacking of goods" was rendered by petitioner in the Philippines for IBEX Global Bermuda, Ltd.**

For the said reason, this Court reiterates that tax refunds are in the nature of a claim for exemption and, therefore, the law is construed in *strictissimi juris* against the taxpayer. Accordingly, the burden of proof to establish the right to a refund lies with the taxpayer-claimant who must show compliance with the statutory requirements of the NIRC of 1997, as amended, and existing jurisprudence. Here, petitioner was not able to discharge its burden of proving its entitlement to its claim for refund for failure to comply with the second and third elements as discussed above.

In view of the foregoing disquisitions, this Court finds no substantial matter or compelling reason to warrant the reversal of the assailed Decision.

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

CATHERINE T. MANAHAN
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

(no part)
MARIAN IVY F. REYES-FAJARDO
Associate Justice