Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

AMADEUS MARKETING PHILIPPINES,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8869

Members:
CASTAÑEDA, JR., *Chairperson*,
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
NOV 2 7 2017
4:15 p.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review[1], filed by petitioner, Amadeus Marketing Philippines, Inc., against respondent, Commissioner of Internal Revenue (CIR), seeking the refund or issuance of a tax credit certificate (TCC) in the amount of Thirty One Million Eight Hundred Eighty One Thousand One Hundred Eleven and 78/100 Pesos (₱31,881,111.78), allegedly representing unutilized input value-added tax (VAT) attributable to its zero-rated sales/receipts for the first, second, third, and fourth quarters of calendar year (CY) 2012.

Petitioner is a corporation duly organized under the laws of the Philippines, with address at 36th Floor, LKG Tower, 6801 Ayala Avenue, Makati City.[2] It is registered with the Securities and Exchange Commission with Company Registration No. A1997-11194.[3] Petitioner

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[1] Docket (Vol. I), pp. 14-30.
[2] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 542.
[3] Par. 4, Summary of Admitted Facts, JSFI, Docket (Vol. I), p. 543; Exhibit "P-1".

is, likewise, registered with the Bureau of Internal Revenue (BIR) as a VAT-registered entity with Certificate of Registration No. OCN 9RC0000133815 dated January 1, 1998.[4]

Petitioner's primary purpose is to market an automated computerized reservations system, the "Amadeus Global Travel Distribution" that incorporates a software package which performs various functions, such as real line airlines seat reservations, schedules bookings for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing and fare pricing displays in the Philippines.[5]

On the other hand, respondent CIR is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund as provided by law. He may be served with summons, notices and other court processes at his office at the BIR National Office Building, Diliman, Quezon City.[6]

On March 28, 2014, petitioner filed with the BIR Revenue District Office No. 50 an administrative claim[7] for refund of unutilized input VAT for the first to fourth quarters of year 2012 in the total amount of ₱31,881,111.78.

As respondent failed to act on its administrative claim for refund, petitioner filed the instant Petition for Review[8] before this Court on August 14, 2014.

Respondent filed his Answer[9] on September 24, 2014, interposing the following special and affirmative defenses:

> "3. She reiterates and repleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses;
>
> 4. Petitioner's alleged claim for issuance of tax credit certificate/refund is still subject to administrative

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[4] Exhibit "P-2".
[5] Par. 5, Summary of Admitted Facts, JSFI, Docket (Vol. I), p. 543.
[6] Par. 3, Summary of Admitted Facts, JSFI, Docket (Vol. I), p. 542.
[7] Exhibit "P-25"; Exhibit "P-26".
[8] Supra note no. 1.
[9] Docket (Vol. I), pp. 66-68.

routinary investigation/examination by the respondent's Bureau;

5. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

6. Petitioner's claim for refund in the amount of **₱31,881,111.78**, as alleged unutilized input VAT attributable to its zero-rated sales/receipts for the 1st, 2nd, 3rd, and 4th quarters of calendar year 2012 were not fully substantiated by proper documents, such as but not limited to the sales invoices, official receipts, import documents and others *(sic)* pertinent records.

7. In an action for refund/credit, the burden of proof is upon petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim.

8. Petitioner's sales of goods and services to various alleged clients/affiliates do not qualify as zero-rate VAT.

9. The amount subject of the claim for cash refund of petitioner does not pertain in full to its input VAT attributable to its zero-rated sales/receipts for the 1st, 2nd, 3rd and 4th quarters of calendar year 2012.

10. Petitioner failed to comply with the substantiation requirements under Section 113 and 237 of the 1997 Tax Code in relation to Revenue Regulations No. 16-2005.

11. Petitioner failed to comply with the conditions/requirements under Section 112(A)(B)(C) (D) of the 1997 Tax Code.

12. Claims for refund are construed strictly against herein petitioner for the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211***)."

A Notice of Pre-Trial Conference[10] was issued by this Court on September 25, 2014, setting the case for pre-trial conference on November 6, 2014. Accordingly, Respondent's Pre-Trial Brief[11] was filed on October 30, 2014, while petitioner's Pre-Trial Brief[12] was filed on October 31, 2014.

Pre-trial conference ensued. The parties submitted their Joint Stipulation of Facts and Issues[13] (JSFI) on November 25, 2014. On December 2, 2014, the Court issued a Pre-Trial Order[14] adopting the parties' JSFI and the pre-trial was deemed terminated.

Upon petitioner's motion[15], the Court commissioned Mr. Joseph Cedric V. Calica as Independent Certified Public Accountant (ICPA).[16]

During trial, petitioner presented the following as witnesses: (1) Ms. Krizel Sansano[17], its Finance Supervisor; (2) Ms. Romanelle S. Aguila[18], its Finance Officer II; and (3) Mr. Joseph Cedric V. Calica[19], the ICPA.

Petitioner filed its Formal Offer of Evidence[20] on July 31, 2015. The Court admitted all of petitioner's evidence except Exhibits "P-102-629-1", "P-102-629-2", "P-102-1048-1", "P-102-1048-2", "P-102-1447-1", "P-102-1447-2", "P-102-1589-1", "P-102-1589-2", "P-102-1938-1", "P-102-1938-2", "P-102-2063-1", "P-102-2063-2", "P-102-2575-1", "P-102-2575-2", "P-102-3253-1", "P-102-3253-2", "P-102-3648-1", "P-102-3648-2", "P-102-4081-1", "P-102-4081-2", "P-102-4457-1", and "P-102-4457-2". [21]

On the other hand, respondent manifested that he has no witness to present in this case.[22]

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[10] Docket (Vol. I), p. 70.
[11] Docket (Vol. I), pp. 71-73.
[12] Docket (Vol. I), pp. 239-249.
[13] Docket (Vol. I), pp. 542-548.
[14] Docket (Vol. I), pp. 556-566.
[15] Motion to Avail the Provisions of Rule 13 of the Revised Rules of the Court of Tax Appeals, filed on November 21, 2014, Docket (Vol. I), pp. 528-530.
[16] Minutes of the Hearing dated December 4, 2014, Docket (Vol. I), p. 569.
[17] Minutes of the Hearing dated February 18, 2015, Docket (Vol. I), p. 576; and Minutes of the Hearing dated July 11, 2016, Docket (Vol. III), p. 1421.
[18] Minutes of the Hearing dated April 13, 2015, Docket (Vol. II), p. 596.
[19] Minutes of the Hearing dated May 25, 2015, Docket (Vol. II), p. 614.
[20] Docket (Vol. II), pp. 630-652.
[21] Resolution dated August 25, 2015, Docket (Vol. II), pp. 1094-1096.
[22] Minutes of the Hearing dated August 26, 2015, Docket (Vol. II), p. 1097.

On February 16, 2016, petitioner filed a Motion to Re-open the Case[23], which the Court granted on May 16, 2016[24]. Petitioner then filed its Supplemental Formal Offer of Evidence[25] on August 1, 2016, which was admitted by the Court in its Resolution[26] dated September 20, 2016.

The case was submitted for decision on December 2, 2016[27], considering petitioner's Memorandum[28] and Supplemental Memorandum[29] filed on November 9, 2015 and November 21, 2016, respectively. Respondent failed to file a memorandum per Records Verification[30] dated November 23, 2016.

The parties submitted the following issues[31] for this Court's resolution:

A. Whether petitioner is entitled to a refund for the unutilized input VAT in the total amount of Thirty One Million Eight Hundred Eighty One Thousand One Hundred Eleven and 78/100 Pesos (₱31,881,111.78) for the first (1st), second (2nd), third (3rd), and fourth (4th) quarters of taxable year 2012;

B. Whether petitioner is engaged in zero-rated or effectively zero-rated sales;

C. Whether the input taxes being claimed are due or paid;

D. Whether the input taxes being claimed have not been applied against output taxes during and in the succeeding quarters;

E. Whether the input taxes claimed are attributable to zero-rated or effectively zero-rated sales;

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[23] Docket (Vol. III), pp. 1133-1142.
[24] Resolution dated May 16, 2016, Docket (Vol. III), pp. 1158-1161.
[25] Docket (Vol. III), pp. 1428-1433.
[26] Docket (Vol. III), pp. 1529-1530.
[27] Resolution dated December 2, 2016, Docket (Vol. III), p. 1557.
[28] Docket (Vol. II), pp. 1109-1129.
[29] Docket (Vol. III), pp. 1537-1555.
[30] Docket (Vol. III), p. 1556.
[31] Statement of the Issues, JSFI, Docket (Vol. I), pp. 543-544.

F. Whether the claim is filed within two years after the close of the taxable quarter when such sales were made;

G. Whether petitioner has complied with substantiation requirements prescribed under Sections 113 and 237 of the 1997 Tax Code in relation to Revenue Regulations No. 16-2005; and

H. Whether petitioner has complied with the requirements under Section 112 (A)(C)(D) of the 1997 Tax Code.

The foregoing issues may be simplified into whether or not petitioner is entitled to the refund or issuance of TCC in the amount of ₱31,881,111.78, representing unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2012.

Pertinent to the resolution of the present case are the provisions of Section 112(A) and (C) of the Tax Code, which provide as follows:

> "**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 nonzero-rated sales.

xxx xxx xxx

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals."

Pursuant thereto and as laid down by the Supreme Court in a long line of decisions[32], the following requisites must be satisfied by the taxpayer-claimant in order that its claim for refund or tax credit of unutilized input VAT attributable to zero-rated or effectively zero-rated sales may be allowed or granted:

1. the taxpayer must be VAT-registered;
2. the taxpayer must be engaged in zero-rated or effectively zero-rated sales;
3. the input tax due or paid must be attributable to such sales, except the transitional input VAT, to the extent that such input VAT has not been applied against any output VAT liability; and
4. The claim must be filed within the prescribed period both in the administrative and judicial levels.

[32] *Luzon Hydro Corporation vs. Commissioner of Internal Revenue*, G.R. No. 188260, November 13, 2013; *Silicon Philippines, Inc. (Formerly Intel Philippines Manufacturing, Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 172378, January 17, 2011; *AT&T Communications Services Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 182364, August 3, 2010; *San Roque Power Corporation vs. Commissioner of Internal Revenue*, G.R. No. 180345, November 25, 2009; and *Intel Technology Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166732, April 27, 2007.

Before addressing the other requisites, determination of the timeliness of the filing of petitioner's claim for refund or issuance of TCC must be dealt with first.

Pursuant to Section 112(A) of the Tax Code, petitioner has two years within which to file for an application for refund or tax credit of input VAT attributable to zero-rated or effectively zero-rated sales reckoned from the close of the taxable quarter when the sales were made. Thus, petitioner's last day for filing its administrative claim for the four taxable quarters of 2012 fell on the following dates:

Period covered	**Last day of the Two-year period**
January to March 2012 (1st qtr)	March 31, 2014
April to June 2012 (2nd qtr)	June 30, 2014
July to September 2012 (3rd qtr)	September 30, 2014
October to December 2012 (4th qtr)	December 31, 2014

Records show that petitioner filed its Application for VAT Refund[33] for the subject periods, along with the supporting documents, with the BIR on March 28, 2014, thus, well within the two-year prescriptive period.

On the other hand, Section 112(C) of the Tax Code states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the period of 30 days, which refers to the period for filing of a judicial claim with the CTA.[34]

Thus, respondent had 120 days from March 28, 2014, the considered date of submission of petitioner's complete documents or until July 26, 2014 to act on petitioner's claim. After the lapse of the 120-day period, petitioner had thirty (30) days or until August 25, 2014 within which to file a judicial claim before this Court. Due to respondent's inaction on its claim, petitioner filed its Petition for Review before this Court on August 14, 2014, which is within the required 30-

[33] Exhibits "P-25" and "P-26", respectively.
[34] *Rohm Apollo Semiconductor Philippines vs. Commissioner of Internal Revenue,* G.R. No. 168950, January 14, 2015.

day period. Hence, petitioner's judicial claim was also filed within the prescriptive period.

We will now determine whether petitioner complied with the remaining requisites for refund of unutilized input VAT.

It is undisputed that petitioner is a VAT-registered entity, as evidenced by its BIR Certificate of Registration No. OCN 9RC0000133815 dated January 1, 1998[35].

Petitioner asserts that its sales of services to Amadeus IT Group SA for taxable year 2012 qualify as zero-rated sales under Section 108(B)(2) of the Tax Code, which reads:

> "**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:
>
> (1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
>
> (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."

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[35] Exhibit "P-2".

In the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*[36], the Supreme Court laid down the following requisites in order for the sale of services to be VAT zero-rated under Section 108(B)(2) of the Tax Code:

1) the services by a VAT registered person must be other than processing, manufacturing or repacking of goods;
2) payment for such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations; and
3) the recipient of such services is doing business outside the Philippines.

Petitioner satisfactorily met the first requisite. Petitioner's primary purpose as stated in its Amended Articles of Incorporation[37], is to market an automated computerized reservations system "Amadeus Global Travel Distribution" which incorporates a software package that performs various functions, including real-line airlines seat reservations, schedules bookings for a variety of air, boat, train, package tours, car rental and hotel services, automatic ticketing and fare pricing display in the Philippines.

Pursuant to the ACO (Amadeus Commercial Organization) Agreement[38] entered into by petitioner with its foreign affiliate, Amadeus IT Group SA, petitioner shall render services to the latter by marketing, promoting, offering and distributing the Amadeus products in the Philippines. Such marketing services do not fall within the scope of "services other than processing, manufacturing or repacking of goods" contemplated by the aforementioned provision.

To prove compliance with the third requisite, petitioner submitted the Authenticated Articles of Association of Amadeus IT Group SA[39] and the Certificate of Non-Registration of Amadeus I.T. Group SA[40] duly issued by the Philippine Securities and Exchange Commission.

While these documents prove that Amadeus IT Group SA is a non-resident foreign corporation organized and established under the laws of Spain, records show that Amadeus IT Group SA conducts business in the Philippines.

[36] G.R. No. 153205, January 22, 2007.
[37] Exhibit "P-3".
[38] Exhibit "P-4".
[39] Exhibit "P-6".
[40] Exhibit "P-5".

A perusal of petitioner's Quarterly VAT Returns shows that it had input VAT on services rendered by non-residents in the amounts of ₱3,230,491.54[41], ₱5,008,003.08[42], ₱4,497,219.58[43], and ₱4,156,667.54[44] for the first, second, third and fourth quarters of 2012, respectively, or a total of ₱16,892,381.74. Out of the said reported input taxes, the amount of ₱15,755,085.95 was duly supported by monthly Remittance Returns of VAT and Other Percentage Taxes Withheld (BIR Forms No. 1600), as per the Schedule of Purchases of Goods and Services and Corresponding Input Tax for the Period January 1 to December 31, 2012[45], to wit:

Month	Name of Supplier	Exhibit No.	Amount
January	Amadeus IT Group SA	P-102-629-1; P-139	₱ 1,037,907.12
February	Amadeus IT Group SA	P-102-1048-1; P-140	1,171,504.52
March	Amadeus	P-102-1447-1; P-141	1,914,283.61
April	Amadeus	P-102-1589-1; P-142	1,671,676.09
May	Amadeus IT Group SA	P-102-1938-1; P-143	1,427,202.15
June	Amadeus IT Group SA	P-102-2063-1; P-144	1,527,419.00
July	Amadeus	P-102-2575-1; P-145	1,376,234.56
August	Amadeus IT Group SA	P-102-3253-1; P-146	1,528,013.09
September	Amadeus IT Group SA	P-102-3648-1; P-147	1,295,275.10
October	Amadeus IT Group SA	P-102-4081-1; P-148	1,450,541.79
November	Amadeus IT Group SA	P-102-4457-1; P-149	1,355,028.92
Total			**₱ 15,755,085.95**

Evidently, Amadeus IT Group SA, to whom petitioner claims to have made its zero-rated sales, have rendered services to petitioner in the Philippines. Thus, consequently subjected to VAT.

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 Tax Code, 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.

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[41] Exhibit "P-15", *Line 21L.*
[42] Exhibit "P-16", *Line 21L.*
[43] Exhibit "P-17", *Line 21L.*
[44] Exhibit "P-18", *Line 21L.*
[45] Exhibit "P-102", attached to the ICPA Report.

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**."

"**SEC. 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

"**SEC. 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."

In the fairly recent case of *Amadeus Marketing Philippines, Inc. vs. Commissioner of Internal Revenue*[46] where the Court *En Banc* was confronted with a similar issue involving the same parties and agreements, it upheld the decision of the Court in Division stating:

"The Court *En Banc* reiterates the Court in Division's ruling in its Resolution on AMPI's Motion for Reconsideration that:

'xxx 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, while its Distribution Agreement with Amadeus IT Group S.A. was entered on January 1, 2001, and were both existing for several years.'"

We also quote with approval the Concurring Opinion of Presiding Justice Roman G. Del Rosario in the same case, *viz:*

"Applying both the 'substance test' and the 'continuity test' laid down in ***The Mentholatum Co., Inc. vs. Anacleto Mangaliman,*** and cited in ***Agilent Technoligies Singapore vs. Integrated Silicon Technology Philippines*** to the present case, I submit that Amadeus IT Group S.A. is doing business in the Philippines.

In contracting petitioner to render marketing services on its behalf pursuant to the ACO Agreement, Amadeus IT Group S.A. is actively pursuing its business in the Philippines. **The marketing services rendered by petitioner under the ACO Agreement were intended for consumption by Amadeus IT Group S.A. in connection with its business in the Philippines.**

[46] CTA EB No. 1483 (CTA Case No. 8628), October 9, 2017.

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**."

"**SEC. 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

"**SEC. 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."

Under the Distribution Agreement, Amadeus IT Group S.A. appointed petitioner as its sole distributor of its products to customers in the Philippines. The **Distribution Agreement states that petitioner shall be responsible for the marketing of the products to customers in the Philippines**, and that petitioner is authorized to grant to Subscribers, non-exclusive, non-transferable licenses, or access rights where applicable to use Amadeus Products and Services. On the other hand, **under the ACO Agreement**, petitioner undertakes to market, offer and promote in the Philippines, the Amadeus System to Subscribers by means of the Amadeus products, and to carry out the necessary actions in the Philippines in order to give Subscribers appropriate access to the Amadeus Global Core, or to other computer database offered or to be offered by Amadeus IT Group S.A. under license from a third party. **The ACO Agreement further provides that Amadeus IT Group S.A. shall pay petitioner a Distribution Fee which shall be considered as a commission fee for marketing, offering and promoting Amadeus Products in the Philippines.**

Sans the ACO Agreement, petitioner may be justified in insisting that Amadeus IT Group S.A. is not engaged in the active conduct or pursuit of its business in the Philippines, as the Distribution Agreement only grants to petitioner the authority to grant to Subscribers, non-exclusive, non-transferable licenses, or access rights where applicable, to use Amadeus Products and Services, for which Amadeus IT Group S.A. collects license fees or royalties. When the ACO Agreement and the Distribution Agreement are, however, taken together, they belie petitioner's proposition that the transactions of Amadeus IT Group S.A. in the Philippines are merely passive, isolated, occasional or casual in nature. The apparent contradiction in the ACO Agreement and the Distribution Agreement with respect to the marketing of Amadeus IT Group S.A.'s products in the Philippines is noticeable. While the Distribution Agreement says that petitioner is responsible for marketing the Amadeus Products in the Philippines which according to petitioner is indicative that Amadeus IT Group S.A. has no participation on the operations of petitioner's business in the Philippines, **the**

ACO Agreement clearly states that petitioner has been appointed by Amadeus IT Group S.A. precisely to market, offer and promote Amadeus System, by means of Amadeus Products, in the Philippines.

The following terms of the ACO Agreement clearly establish that Amadeus IT Group S.A. actively participates in the operations of petitioner's business in the Philippines – which means that it actually pursues its business in the Philippines and that petitioner merely acts as its agent: **(i) petitioner shall market, offer and promote the Amadeus System to Subscribers, by means of the Amadeus products**, and to carry out the necessary actions in the Philippines in order to give appropriate access to Subscribers, to the Amadeus Global Core, or to other computer databases offered or to be offered by Amadeus IT Group S.A. from a third party; (ii) **petitioner shall receive from Amadeus IT Group S.A. distribution fee as a commission for each net booking** processed through the Amadeus System by a Subscriber located in the Philippines; (iii) in case a Subscriber abuses the Amadeus System, Amadeus IT Group S.A. **may require the Subscriber to stop the misuse, or terminate the agreement with the Subscriber**, or require the Subscriber to pay a corresponding fee; (iv) **upon termination, petitioner shall immediately discontinue the sale or distribution of all Amadeus Products and the use of the Amadeus System**, all Proprietary Marks, and any names, marks or signs which are confusingly similar thereto, and all other materials which may indicate that petitioner is or was representing or otherwise associated with the Amadeus Group; (v) **upon termination, return to Amadeus IT Group S.A. all equipment supplied to petitioner for marketing, offering and promotion** of Amadeus Products for use in connection with the Amadeus System or other Amadeus Products."

Clearly, despite the documents offered by petitioner to prove that Amadeus IT Group SA is not registered and not doing business in the Philippines, a reading of the Distribution Agreement[47] and ACO Agreement shows the contrary.

[47] Exhibit "P-11", docket, vol. II, p. 864-884.

Hence, considering that Amadeus IT Group SA, the recipient of petitioner's services, is doing business in the Philippines, petitioner failed to satisfy the third requisite for VAT zero-rating of sale of services. Having failed to prove that it had zero-rated sales for the year 2012, from which the claimed input VAT is attributable to, the second requisite for the refund or tax credit of input VAT under Section 112(A) of the Tax Code was also not met.

Basic is the rule that tax refunds are in the nature of tax exemptions and are to be construed *strictissimi juris* against the entity claiming the same.[48] Moreover, statutes in derogation of sovereignty such as those containing exemption from taxation should be strictly construed in favor of the state.[49] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[50]

In view of the foregoing, the Court finds no reason to discuss whether petitioner complied with the other requisites to be entitled to the claim for refund/TCC.

For having failed to sustain the burden placed upon petitioner by presenting proof that it is entitled to the refund or issuance of a TCC in the amount of ₱31,881,111.78 allegedly representing unutilized input VAT attributable to its zero-rated sales for CY 2012, the dismissal of the instant Petition for Review is in order.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[48] *Philippine Geothermal, Inc., vs. Commissioner of Internal Revenue,* G.R. No. 154028, July 27, 2005.
[49] *Philippine Long Distance Telephone Company vs. City of Davao, et. al.*, G.R. No. 143867, March 25, 2003.
[50] *National Power Corporation vs Province of Isabela*, G.R. No. 165827, June 16, 2006 citing *Cyanamid Philippines, Inc. vs Court of Appeals*, 379 Phil. 689, 703 (2000).

WE CONCUR:

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

Catherine T. Manahan
(With Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AMADEUS MARKETING PHILIPPINES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8869

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

NOV 27 2017 4:15 p.m.

x- x

Dissenting Opinion

MANAHAN, J.:

The majority found that the transactions between petitioner Amadeus Marketing Philippines, Inc. (petitioner) and Amadeus IT Group S.A. included services rendered in the Philippines by Amadeus IT Group S.A. to petitioner, as such, Amadeus IT Group S.A. was consequently subjected to VAT. The majority also relied on the recent CTA *En Banc* Decision dated October 9, 2017, to *wit:*

> In the fairly recent case of *Amadeus Marketing Philippines, Inc. vs. Commissioner of Internal Revenue* where the Court *En Banc* was confronted with a similar issue involving the same parties and agreements, it upheld the decision of the Court in Division stating:
>
> > The Court *En Banc* reiterates the Court in Division's ruling in its Resolution on AMPI's Motion for Reconsideration that:
> >
> > > 'xxx 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, while its Distribution Agreement with Amadeus IT Group S.A. was entered on January 1, 2001, and were both existing for several years.'

We also quote with approval the Concurring Opinion of Presiding Justice Roman G. Del Rosario in the same case, *viz:*

> Applying both the 'substance test' and the 'continuity test' laid down in *The Mentholatum Co., Inc. vs. Anacleto Mangaliman*, and cited in *Agilent Technologies Singapore vs. Integrated Silicon Technology Philippines* to the present case, I submit that Amadeus IT Group S.A. is doing business in the Philippines.
>
> In contracting petitioner to render marketing services on its behalf pursuant to the ACO Agreement, Amadeus IT Group S.A. is actively pursuing its business in the Philippines. The marketing services rendered by petitioner under the ACO Agreement were intended for consumption by Amadeus IT Group S.A. in connection with its business in the Philippines.
>
> Under the Distribution Agreement, Amadeus IT Group S.A. appointed petitioner as its sole distributor of its products to customers in the Philippines. The Distribution Agreement states that petitioner shall be responsible for the marketing of the products to customers in the Philippines, and that petitioner is authorized to grant to Subscribers, non-exclusive, non-transferable licenses, or access rights where applicable to use Amadeus Products and Services. On the other hand, under the ACO Agreement, petitioner undertakes to market, offer and promote in the Philippines, the Amadeus System to Subscribers by means of the Amadeus products, and to carry out the necessary actions in the Philippines in order to give Subscribers appropriate access to the Amadeus Global Core, or

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to other computer database offered or to be offered by Amadeus IT Group S.A. under license from a third party. The ACO Agreement further provides that Amadeus IT Group S.A. shall pay petitioner a Distribution Fee which shall be considered as a commission fee for marketing, offering and promoting Amadeus Products in the Philippines.

Sans the ACO Agreement, petitioner may be justified in insisting that Amadeus IT Group S.A. is not engaged in the active conduct or pursuit of its business in the Philippines, as the Distribution Agreement only grants to petitioner the authority to grant to Subscribers, non-exclusive, non-transferrable licenses, or access rights where applicable, to use Amadeus Products and Services, for which Amadeus IT Group S.A. collects license fees or royalties. When the ACO Agreement and the Distribution Agreement are, however, taken together, they belie petitioner's proposition that the transactions of Amadeus IT Group S.A. in the Philippines are merely passive, isolated, occasional or casual in nature. The apparent contradiction in the ACO Agreement and the Distribution Agreement with respect to the marketing of Amadeus IT Group S.A.'s products in the Philippines is noticeable. While the Distribution Agreement says that petitioner is responsible for marketing the Amadeus Products in the Philippines which according to petitioner is indicative that Amadeus IT Group S.A. has no participation on the operations of petitioner's business in the Philippines, the ACO Agreement clearly states that petitioner has been appointed by Amadeus IT Group S.A. precisely to market, offer and promote Amadeus System, by means of Amadeus Products, in the Philippines.

The following terms of the ACO Agreement clearly establish that Amadeus IT Group S.A. actively participates in the operations of petitioner's business in the Philippines – which means that it actually pursues its business in the Philippines and that petitioner merely acts as its agent: (i) petitioner shall market, offer and promote the Amadeus System to Subscribers, by means of the Amadeus products, and to carry out the necessary actions in the Philippines in order to give appropriate access to Subscribers, to the

> Amadeus Global Core, or to other computer databases offered or to be offered by Amadeus IT Group S.A. from a third party; (ii) petitioner shall receive from Amadeus IT Group S.A. distribution fee as a commission for each net booking processed through the Amadeus System by a Subscriber located in the Philippines; (iii) in case a Subscriber abuses the Amadeus System, Amadeus IT Group S.A. may require the Subscriber to stop the misuse, or terminate the agreement with the Subscriber, or require the Subscriber to pay a corresponding fee; (iv) upon termination, petitioner shall immediately discontinue the sale or distribution of all Amadeus Products and the use of the Amadeus System, all Proprietary Marks, and any names, marks or signs which are confusingly similar thereto, and all other materials which may indicate that petitioner is or was representing or otherwise associated with the Amadeus Group; (v) upon termination, return to Amadeus IT Group S.A. all equipment supplied to petitioner for marketing, offering and promotion of Amadeus Products for use in connection with the Amadeus System or other Amadeus Products.
>
> Clearly, despite the documents offered by petitioner to prove that Amadeus IT Group SA is not registered and not doing business in the Philippines, a reading of the Distribution Agreement and ACO Agreement shows the contrary.

With due respect, I manifest and reiterate my dissent, originally presented in CTA EB No. 1483, October 9, 2017, to the conclusion that Amadeus IT Group S.A. is doing business in the Philippines.

Under the terms of the ACO (Amadeus Commercial Organization) Agreement, Amadeus IT Group S.A. grants petitioner the right to use the proprietary marks connected with Amadeus products for the duration of the Agreement. The relationship between petitioner and Amadeus IT Group S.A. is two-pronged and is revealed by the provisions of the Distribution Agreement and the ACO Agreement.

An analysis of the provisions of the Distribution Agreement discloses that it is a contract where the Amadeus Group designates petitioner to be the distributor or marketing agent of the so-called "Amadeus Global Travel Distribution System." The pertinent provisions are quoted below:

> WHEREAS, the Amadeus group of companies has developed a fully automated reservation and distribution system known as the Amadeus Global Travel Distribution System which is marketed by Amadeus NMC according to the terms and conditions of the Amadeus Marketing-NMC Agreement executed as of the 1st of July, 1997 (the "Main Agreement").
>
> WHEREAS, the Amadeus group of companies has, and will further develop, a Travel Agency Management System (hereinafter referred to as "the Product") that interacts and is compatible with the Amadeus Global Travel Distribution System."
>
> xxx
>
> 2. General Terms of Agreement
>
> 2.1 Amadeus appoints Amadeus NMC as its *sole distributor* of the Product to its subscribers in the Territory defined under Article 3 below.
>
> 2.2 Amadeus NMC shall be responsible for *marketing the Product to Subscribers* located in Amadeus NMC Territory.
>
> 2.3 Subject to the terms and conditions of this Agreement, Amadeus hereby authorized Amadeus NMC to grant to Subscribers, non-exclusive, non-transferable licenses to use the Product for the purpose of facilitating the provision of reservation functions and related services, and to interface with agreed upon travel agency third party software. Amadeus shall enter into a License Agreement substantially in the form of Appendix C attached hereto with each Subscriber.

In order for petitioner to be able to grant its Subscribers the license to use the products under the Distribution Agreement, it is imperative that petitioner is authorized by the owner of the software to use certain proprietary marks owned by the Amadeus Group. The ACO Agreement between petitioner and Amadeus IT Group S.A. grants such authority. Section 3.1 of said ACO Agreement provides:

> 3.3 Amadeus grants Amadeus ACO the right to use certain Proprietary Marks connected with Amadeus products as long as this Agreement is in force. The Proprietary Marks include, but are not limited to, those registered or which may become registered with the International Trademark Office, the Spanish Trademark authorities or other National Trademark offices.

To prove that the income payments made to Amadeus IT Group S.A. are royalty payments, AMPI presented, among others, its Monthly Remittance Returns of VAT and Other Percentage Taxes Withheld (BIR Form No. 1600) for the period January 1 to December 31, 2012. A perusal of these monthly remittance returns reveals that AMPI used the ATC Code "WV050" in remitting the VAT withheld from its income payments to Amadeus IT Group S.A.

In Revenue Memorandum Order No. (RMO) 09-07 issued on May 30, 2007, the Alphanumeric Tax Code (ATC) No. "WV050" is designated to be the code for VAT withheld on the "Lease or use of properties or property rights owned by non-residents" which would cover the royalty payments made pay AMPI to its principal Amadeus IT Group S.A.

As a general rule, royalties are considered as passive income as they do not originate from the active pursuit of the recipient's business but merely from its assets such as software, trademarks, designs, etc. The mere acceptance of royalties for the use of a property right in the instant case is not constitutive of doing business in the Philippines as the foreign counterpart does not play an active role in the pursuit of business. Amadeus IT Group S.A. is merely a passive player earning royalties from the AMPI.

For the foregoing, I vote that the Petition for Review be GRANTED.

CATHERINE T. MANAHAN
Associate Justice