Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

DEUTSCHE KNOWLEDGE SERVICES PTE. LTD., Petitioner,	EB Case No. 1145 (CTA Case No. 8012)
- versus -	Present: DEL ROSARIO, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and RINGPIS-LIBAN, *J.J.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 18 2015 4:08 p.m.

x---x

DECISION

CASANOVA, J.:

This is an appeal, by way of Petition for Review, filed by petitioner, Deutsche Knowledge Services, Pte Ltd., seeking the reversal of the Decision[1] dated June 26, 2013 (the "Assailed Decision") and Resolution[2] dated March 12, 2014 (the "Assailed Resolution"), both rendered by the Court of Tax Appeals (CTA) Special Third Division denying petitioner's claim for refund of input VAT attributable to its zero-rated sales for the fourth quarter of calendar year 2007, for insufficiency of evidence.

The facts of the case, as narrated in the Assailed Decision, are as follows:

[1]Division Docket (Vol. I), pp. 397-414
[2] Ibid, Vol. II, pp. 854-857

"Petitioner is licensed to do business as a regional operating headquarters in the Philippines by the Securities and Exchange Commission ('SEC') on April 25, 2005, pursuant to Omnibus Investment Code of 1987, as amended by Republic Act No. 8756, and its implementing rules and regulations, to engage in general administration and planning; business planning and coordination; sourcing/procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistics services; research and development services and product development; technical support and maintenance; data processing and communication and business development.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law, with office address at the 5th Floor, Bureau of Internal Revenue ('BIR') National Office Building, Agham Road, Diliman, Quezon City.

Petitioner was registered with the BIR on June 16, 2005 as a VAT registered taxpayer with Taxpayer Identification No. ('TIN') 238-763-115-000.

In the 4th quarter of CY 2007, petitioner rendered services in the Philippines to persons engaged in business conducted outside the Philippines, the payments for which were made in Euro and other acceptable foreign currency and accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas*.

On January 21, 2008, petitioner filed its original Quarterly VAT Return for the 4th quarter of CY 2007 with the BIR through the electronic filing and payment system ('EFPS'). On May 19, 2008, petitioner filed an amended Quarterly VAT Return for the 4th quarter of CY 2007 with the BIR through the EFPS.

For the 4th quarter of CY 2007, petitioner accumulated excess input tax in the total amount of ₱40,215,567.29 attributable to zero-rated sales which, to date, has remained unutilized and/or unapplied against petitioner's output VAT liability.

On November 9, 2009, petitioner filed with the BIR-Revenue District Office No. 47 an Application for Tax Credits/Refunds (BIR Form No. 1914) of its excess and unutilized input VAT for the 4th quarter of CY 2007 in the amount of ₱40,215,567.29.

To date, respondent has not act *(sic)* on petitioner's administrative claim for refund of excess and unutilized input VAT for the 4th quarter of CY 2007. Petitioner is, thus, constrained to file this Petition for Review.

On February 11, 2010, respondent filed her Answer, interposing the following Special and Affirmative Defenses:

> 4. Petitioner is not entitled to refund or tax credit in the amount of ₱40,215,567.29 representing alleged unutilized input tax because it failed to submit necessary and relevant documents pertaining to the above-mentioned amount with respondent in the administrative claim for refund or tax credit of excess input tax.
>
> 5. In an administrative claim for refund or tax credit of input taxes attributable to zero-rated sales, a VAT registered person must submit complete documents to support its application for refund pursuant to Section 112(D) of the National Internal Revenue Code (NIRC) of 1997. Otherwise, there will be no sufficient compliance with the filing of an administrative claim for refund, which is a condition *sine qua non* prior to the filing of judicial claim.
>
> 6. To support its claim, it is imperative for petitioner to prove and present the following, *viz*:
>
> a. The registration requirements of a value-added taxpayer in compliance with

Section 6(a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-a(a) of Revenue Regulations No. 7-95, and Section 236 of the NIRC of 1997;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the NIRC of 1997;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund pursuant to Revenue Memorandum Order No. 53-98. It is worthy of emphasis that Section 112(D) of the NIRC of 1997 requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review;

d. That the input taxes of ₱40,215,567.29 allegedly paid by petitioner on its domestic purchases of non-capital goods and services, services rendered by non-residents and importation of non-capital goods for the 4th quarter of taxable year 2007 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative claim for tax credit or refund of the unutilized input tax (VAT) was filed within two(2)-year after the close of the taxable quarter when the sales were made in accordance with Sections 112(A) and (D) of the NIRC of 1997;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade or business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase journal, showing that it actually paid VAT in accordance with Sections 110(A)(2) and 113 of the NIRC of 1997, and in pursuance to Section 4.104-5(a) and (b) of Revenue Regulations No. 7-95 (RE: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95 (Re: Persons who can avail of the Input Tax Credits).

7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).

8. Petitioner likewise did not submit any proof that it rendered services to persons engaged in business conducted outside the Philippines, the payments of which were made in Euro other acceptable foreign currency in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

9. Section 108(B)(2) of the NIRC of 1997 states that:

'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, 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);'

As shown by the above provision, the taxpayer must comply with the following requirements: 1) the recipient is doing business outside the Philippines, 2) the payment of the service fees was in acceptable foreign currency, and 3) accounting of such remittance was in accordance with BSP rules.

10. In the case of *Commissioner of Internal Revenue vs. Burmeister & Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, January 22, 2007, the Supreme Court stated:

> The Tax Code not only requires that the services be other than 'processing, manufacturing or repacking of goods' and that payment for such services be in acceptable foreign currency accounted for in accordance with BSP rules. Another essential condition for qualification to zero-rating under Section 102(b)(2) is the **recipient of such services is doing business *outside* the Philippines**. While this requirement is not expressly stated in the second paragraph of Section 102(b)

this is clearly provided in the first paragraph of Section 102(b) where the listed services must be **'for other persons doing business outside the Philippines.'** The phrase 'for other persons doing business outside the Philippines' not only refers to the services enumerated in the first paragraph of Section 102(b), but also pertains to the general term 'services' appearing in the second paragraph of Section 102(b). In short, services other than processing, manufacturing, or repacking of goods must likewise be performed for persons doing business outside the Philippines.

This can only be the logical interpretation of Section (b)(2). If the provider and recipient of the 'other services' are both doing business in the Philippines, the payment of foreign currency is irrelevant. Otherwise, those subject to the regular VAT under Section 102(a) can avoid paying the VAT by simply stipulating payment in foreign currency inwardly remitted by the recipient of services. To interpret Section 102(b)(2) to apply a payer-recipient of services doing business in the Philippines is to make the payment of regular VAT under Section 102(a) dependent on the generosity of the taxpayer. The provider of services can choose to pay the regular VAT or avoid it by stipulating payment in foreign currency inwardly remitted by the payer-recipient. Such interpretation removes Section 102(a) as a tax measure in the Tax Code, an interpretation this Court cannot sanction. A tax is a mandatory exaction, not a voluntary contribution.

Hence, petitioner should have at the very least shown evidence on where their recipient is doing business. Outside such proof, there is negligence on petitioner for not showing sufficient evidence to support its claim.

11. Petitioner filed their judicial claim for refund prematurely as less than 120 days have passed from the alleged filing of the administrative claim to the filing of the judicial claim. Under Section 112(D) of the NIRC of 1997, petitioner has 120 days within which to process claims for refund of unutilized input tax, to wit:

> 'SEC. 112. *Refunds or Tax Credits on Input Tax.*
>
> xxx xxx xxx
>
> (D) *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 Subsections (A) and (B) 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.
>
> 12. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund

> and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications **(Asiatic Petroleum Co. vs. Llanes, 49 Phil. 466 cited in Collector of Internal revenue *(sic)* vs. Manila Jockey Club, Inc., 98 Phil 670)**.

On April 6, 2010, the parties filed their 'Joint Stipulation of Facts and Issues'.

Petitioner submitted the sworn statement of Ms. Aileen Felix-Romano, Mr. Romeo De Jesus, Jr. (the Court-Commissioned Independent Certified Public Accountant) ('CPA'), and Ms. Rachel Concepcion, and documentary evidence marked as Exhibits 'A' to 'DDDD-1', inclusive of submarkings.

On the other hand, respondent submitted the judicial affidavit of Mr. Albert Camba, and documentary evidence marked as Exhibits '1' to '4-a', inclusive of submarkings.

After the presentation of evidence by both parties, on June 25, 2012, the Court resolved to submit the case for decision, taking into consideration the 'Memorandum' of petitioner filed on August 17, 2012, and the 'Memorandum' filed by respondent on August 24, 2012."

On June 26, 2013, the CTA Special Third Division rendered the Assailed Decision denying petitioner's Petition for Review for insufficiency of evidence.

On July 12, 2013, petitioner filed a Motion for Reconsideration[3] praying that the Court reconsider the Assailed Decision and grant petitioner's claim for refund of unutilized input VAT on its zero-rated

[3] Id. (Vol. I), pp. 419-428

sales amounting to ₱40,215,567.29. Respondent filed her Comment (To Petitioner's Motion for Reconsideration)[4] on August 15, 2013.

On August 30, 2013, petitioner filed a Supplemental Motion for Reconsideration (With Motion for Leave)[5]. Respondent was ordered by the Court, in its Resolution[6] dated September 16, 2013, to comment on petitioner's aforesaid Supplemental Motion.

On September 17, 2013, a Resolution[7] was promulgated by the Court denying petitioner's Motion for Reconsideration for lack of merit.

Thereafter, petitioner filed, on September 20, 2013, an URGENT MOTION TO RECALL AND SET ASIDE THE RESOLUTION DATED SEPTEMBER 17, 2013[8] praying that the Resolution dated September 17, 2013 be recalled and set aside; and, that petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration (With Motion for Leave) be deemed submitted for resolution after receipt of respondent's Comment or upon the expiration of the 15-day period granted to respondent to file her Comment.

On September 24, 2013, respondent filed her COMMENT (To Petitioner's Supplemental Motion for Reconsideration with Motion for Leave)[9].

On September 27, 2013, the Court promulgated a Resolution[10] which granted petitioner's Urgent Motion to Recall and Set Aside the Resolution dated September 17, 2013; recalled and set aside the Court's Resolution dated September 17, 2013; and, held in abeyance the resolution of petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration (with Motion for Leave).

On October 9, 2013, a Resolution[11] was promulgated setting the case for hearing on November 21, 2013, at 9:00 a.m., for the recall of the Commissioned ICPA, Mr. Romeo de Jesus, Jr., to identify the Supplemental Report dated August 29, 2013, and, giving petitioner ten

---

[4] Id., pp. 440-447
[5] Id., pp. 450-456
[6] Id. (Vol. II), p. 637
[7] Id., pp. 639-641
[8] Id., pp. 642-644
[9] Id., pp. 645-651
[10] Id., pp. 653-654
[11] Id., pp. 656-658

(10) days within which to file its Supplemental Formal Offer of Evidence.

On November 27, 2013, a Resolution[12] was promulgated granting petitioner ten (10) days from November 21, 2013 or until December 1, 2013 to file its Supplemental Formal Offer of Evidence in accordance with the Resolution of the Court dated October 9, 2013 while respondent was granted five (5) days from receipt thereof to file her comment. The Resolution, likewise, ordered that, upon receipt of respondent's comment or the lapse of the period granted for filing thereof, the pending incident shall be deemed submitted for resolution.

On December 2, 2013, petitioner filed its Supplemental Formal Offer of Evidence[13] while respondent filed her Comment (Re: Petitioner's Supplemental Formal Offer of Evidence)[14] on December 3, 2013.

In its Resolution[15] dated January 13, 2014, the Court, acting on petitioner's Supplemental Formal Offer of Evidence with respondent's Comment (Re: Petitioner's Supplemental Formal Offer of Evidence), resolved to admit Exhibits "P-1" to "P-171"; and, deemed petitioner's Motion for Reconsideration, filed on July 12, 2013, and Supplemental Motion for Reconsideration, filed on August 30, 2013, submitted for resolution.

On March 12, 2014, a Resolution[16] was promulgated by the Court denying petitioner's Motion for Reconsideration for lack of merit.

On March 27, 2014, petitioner filed a Motion for Extension of Time To File Petition for Review praying for an additional period of fifteen (15) days from March 29, 2014 or until April 13, 2014, within which to file its Petition for Review. The Court granted petitioner's motion for extension of time per *En Banc* Resolution No. 01-04-05 CTA, as amended by *En Banc* Resolution No. 02-2007.

---

[12] Id., pp. 661
[13] Id., pp. 662-675
[14] Id., pp. 847-850
[15] Id., p. 852
[16] Id., pp. 854-857

On April 14, 2014, petitioner filed its Petition for Review without respondent's comment thereon per Records Verification dated July 1, 2014.

In a Resolution dated August 4, 2014, the Court required the parties to submit their respective memoranda within thirty (30) days from receipt of the resolution.

On September 17, 2014, petitioner filed its Memorandum[17] while respondent filed her Memorandum[18] on October 15, 2014.

The case was deemed submitted for resolution per *En Banc* Resolution promulgated on November 13, 2014.

Hence, this Decision.

Petitioner, in its Petition for Review, submitted the following assignment of errors, to wit:

> "1. The CTA Division erred in denying petitioner's judicial claim for refund, considering that petitioner had duly proven that it had zero-rated sales to which its excess and unutilized input VAT can be attributed.
>
> 2. The CTA Division erroneously concluded that petitioner recognized its income upon actual or constructive receipt of consideration and therefore considered only the sales evidenced by the official receipts dated within the period of claim.
>
> 3. The CTA Division erred in limiting petitioner's judicial claim for refund to those amounts reflected in the official receipts issued within the period of claim, 4th quarter of CY 2007."

Petitioner contends that, contrary to the Court in Division's findings, it had satisfied the requisite laid down by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Burmeister & Wain Scandinavian Contractor Mindanao, Inc.*[19] (Burmeister) i.e. "payment for

[17] En Banc Rollo, pp. 62-77
[18] Ibid, pp. 84-103
[19] G.R. No. 153205, January 22, 2007

such services must be in acceptable foreign currency accounted for in accordance with the BSP rules and regulations". As validated and concluded by the independent CPA in his Supplemental Independent CPA report, petitioner's "zero-rated sales to non-resident entities were paid for in EURO, an acceptable foreign currency, inwardly remitted and duly accounted for in accordance with the regulations of the BSP".

Petitioner further argues that it was erroneous for the Court in Division to conclude that the "sales transaction accrues upon actual or constructive receipt on the part of Petitioner of the consideration, as evidenced by official receipts, regardless of whether or not the service has been rendered". As it has explained and presented proof, it used the accrual method instead of cash method in reporting income for VAT purposes. Thus, in its case, the issuance of the invoice is already proof that service was rendered and the affiliates were billed for such service.

Finally, petitioner posits that Section 108(B)(2) of the Tax Code merely provides that in order to be considered VAT zero-rated, the services rendered to entities doing business outside the Philippines must be "paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP. A taxpayer need not present official receipts to prove zero-rated sales of service or invoice to prove zero-rated sales of goods; compliance with Section 108(B)(2) Tax Code is sufficient.

Respondent, for her part, argues that petitioner is not entitled to tax refund/credit in the amount of ₱40,215,567.29 for alleged excess and unutilized Value-Added Tax (VAT) attributable to zero-rated sales for the 4th quarter of calendar year 2007 for failure to prove that the recipient of such services is doing business outside the Philippines; that petitioner failed to submit complete documents required under Revenue Memorandum Order No. 53-98, in relation to Section 112(C) of the NIRC of 1997, as amended; and, lastly, that petitioner has the burden of proving that it is entitled to claim for refund.

After a careful and thorough evaluation of the case as well as the arguments of both parties in their memoranda, the Court *En Banc* finds no merit in the Petition for Review.

The records of the case indubitably show that the CTA Special Third Division had already fully and exhaustively resolved the issues in relation to the arguments raised in the Petition which We noted are mere rehash of the arguments proffered by petitioner in its Motion for Reconsideration.

There being no new matters or issues raised in the Petition for Review before Us, and there being no reversible error committed by the CTA Special Third Division, the Court *En Banc* finds no cogent reason to reverse the Assailed Decision dated June 26, 2013 and the Assailed Resolution dated March 12, 2014.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen

MA. BELEN M. RINGPIS-LIBAN
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