REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MANILA PENINSULA HOTEL, INC., Petitioner,	**CTA EB NO. 1408** (CTA Case No. 8519)
	Present:
- versus -	Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Cotangco-Manalastas, and Ringpis-Liban, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 12 2016 4:02 p.m.

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DECISION

CASTAÑEDA, JR., *J.*:

This Petition for Review filed by petitioner Manila Peninsula Hotel, Inc., seeks to nullify and set aside the assailed Decision[1] dated August 14, 2015 and the Resolution dated December 10, 2015,[2] respectively.

The dispositive portion of the assailed Decision reads:

[1] Decision dated August 14, 2015, penned by Associate Justice Esperanza R. Fabon-Victorino, Division Docket, Vol. IV, pp. 1493-1512.
[2] Resolution dated December 10, 2015, Division Docket, Vol. IV, pp. 1558-1565.

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

SO ORDERED."[3]

On the other hand, the assailed Resolution reads:

"**WHEREFORE**, petitioner's Motion for Reconsideration (Re: Decision dated 14 August 2015) filed on September 4, 2015, is hereby **DENIED**, for lack of merit.

SO ORDERED."[4]

THE FACTS

The following are the antecedent facts[5] as found by the Court in Division:

"Petitioner Manila Peninsula Hotel, Inc. is a duly registered domestic corporation with address at Ayala Avenue corner Makati Avenue, Makati City. It was incorporated on April 4, 1974 with the primary purpose as follows:

'To lease real estate, and to erect thereon hotels and other buildings and improvements; to own, lease, operate, manage and administer hotels, apartment hotels, and all other facilities, accommodations, adjunct and accessories appurtenant to a general hostelry business; to furnish entertainment and otherwise perform any and all things for the pleasure, comfort and convenience of hotel guests, tenants and other customers; to promote travel and tourism; and otherwise, to handle and engage in other allied businesses; provided that the Corporation will cater only to its hotel customers and their guests.'

Petitioner is also registered with the Large Taxpayers Division of the Bureau of Internal Revenue (BIR) with Tax Identification No. (TIN) 000-170-847-000.

Respondent, on the other hand, is the Commissioner of Internal Revenue (CIR), with the authority to act on claims for refund or tax

[3] See Note 1, p. 1511.
[4] See Note 2, p. 1565.
[5] See Note 1, pp. 1493-1501.

credit of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

During taxable year 2010, petitioner provided room accommodations and food and beverage services to Delta Air Lines, Inc. (Delta Air), a foreign corporation with a License to Transact Business on the Philippines dated December 29, 2009 issued by the SEC. By virtue of such License, Delta Air is allowed to establish a branch office in the Philippines to engage in international air transport services.

Delta Air provides room accommodations and food and beverage services to its pilots and cabin crew during flight layovers in the Philippines. For this purpose, an agreement was executed between Delta Air and petitioner wherein the latter would provide room accommodations and food and beverage services to the former's pilots and cabin crew during flight layovers in the Philippines. The cost of hotel services would be directly charged upon Delta Air and would not constitute compensable income of its crew but as business expense of airline.

For taxable year 2010, petitioner paid respondent the amount of Php74,764,313.49, net of VAT, with the Quarterly VAT Returns (BIR Form No. 2550Q) filed on the following dates:

Quarter (TY 2010)	Date of Filing Return	Date of Payment
First	April 23, 2010	April 23, 2010
First (amended)	July 6, 2011	July 6, 2011
Second	July 23, 2010	July 23, 2010
Second (amended)	July 6, 2011	July 6, 2011
Third	October 22, 2010	October 22, 2010
Fourth	January 25, 2011	January 25, 2011

On June 19, 2012, petitioner filed with BIR's Large Taxpayer Services (BIR-LTS) and Large Taxpayer's Regular Audit Division 2 (BIR-LTRAD 2) an administrative claim for refund of alleged erroneously paid or illegally collected VAT for taxable year 2010 amounting to Php3,807,771.77, consisting of the twelve percent (12%) VAT payments on its sales to Delta Air.

On July 24, 2012, petitioner filed the instant claim for tax refund or TCC claiming inaction on the part of respondent on its application for refund and in order to suspend the running of the two-year prescriptive period under the law. *gr*

On October 2, 2012, respondent filed her Answer, praying for the dismissal of the petition primarily on the ground of lack of cause of action since it neither has a legal standing nor is the real party in interest to maintain the present case as defined under Section 2, Rule 3 of the Rules of Court. Records disclosed that the imposed VAT was part of the payment for the services petitioner rendered to Delta Air. In other words, it was Delta Air and not petitioner, who paid the VAT. Besides, prescription had set in insofar as the period covering the first quarter up to a part of the second quarter of taxable year 2010. Notably, the receipts issued by Delta Air contain the words 'zero-rated', indicating that VAT should not have been imposed on the hotel services petitioner rendered to the airline's crew. Petitioner also failed to exhaust administrative remedies and observe the doctrine of primary jurisdiction as it prematurely filed the instant petition only thirty five (35) days from institution of the administrative claim for refund. There was also non-compliance with Revenue Memorandum Order No. 53-98 requiring submission of complete documentary requirements in the administrative application for refund/TCC. Finally, a claim for refund/TCC is in the nature of tax exemptions, hence, construed *strictissimi juris* against the claimant and liberally in favor of the taxing authority.

On October 15, 2012, petitioner filed its Reply, arguing that:

1. Petitioner has the legal standing to file the claim for refund of erroneously paid VAT;
2. Petitioner clearly showed its cause of action;
3. The claim for VAT refund was timely filed;
4. Petitioner timely and properly filed with respondent the administrative claim for refund; and
5. The alleged failure to submit documents as provided in RMO No. 53-98 is not fatal to petitioner's claim for refund.

After the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues upon which the Pre-Trial Order dated January 22, 2013 was based.

To support its case, petitioner presented five (5) witnesses, namely: Gamiel Gumapon, Josefina P. Malpas, Atty. Ceazar Lorenzo T. Veneracion III, Atty. Noel M. Malaya and Venus Villarosa.

Witness **Gamiel D. Gumapon**, by way of Judicial Affidavit testified that he is a paralegal of Follosco, Morallos and Hearce, who filed petitioner's Claim for Refund of Erroneously Paid/Illegally Collected Value-Added Tax for the Taxable Year ending 2010 in the amount of Php3,807,771.77, together with the supporting documents on June 19, 2012.

Witness **Josefina P. Malpas** declared in her Judicial Affidavit that as petitioner's Assistant Financial Controller- Operation Financial Controls, she approves the tax returns prepared by petitioner's accountant and reviewed by the Assistant Financial Controller – Financial Controls before submission to the BIR, as well as petitioner's Monthly and Quarterly VAT Returns, ensuring that they are timely filed and the corresponding payments are made.

In 2010, petitioner provided hotel rooms and food and beverage services to Delta Air. Petitioner paid VAT for the sales attributable to Delta Air and filed the corresponding BIR Forms 2550Q or Quarterly VAT Returns for 2010 reflecting the twelve percent (12%) VAT on its sales to Delta Air.

On June 19, 2012, petitioner filed an administrative claim for refund, which she signed, with the BIR-LTS and BIR-LTRAD for taxable year 2010 in the amount of Php3,807,771.77. To date, it is still pending.

She added that petitioner included the VAT in the receipts for sales it issued to Delta Air evidencing payments for the services it rendered. The said VAT payment was reported as output VAT. She clarified that Delta Air paid the VAT and petitioner only collected and remitted it to the BIR.

Witness, **Atty. Ceazar Lorenzo T. Veneracion III** corroborated the foregoing testimony adding that he was Northwest Airlines, Inc.'s Finance, Human Resources & Legal Manager until its merger with Delta Air on December 31, 2009. After such merger, he became Delta Air's Human Resource/Legal Manager for the Philippines, Australia and New Zealand until December 31, 2012. As such, he handled all the finance and human resource issues and legal problems and concerns of petitioner. He likewise reviewed all the invoices before their distribution to other departments. On December 31, 2012, he resigned from Delta Air to join Cathay Pacific Airways as Personnel and Administrative Manager.

He further testified that Delta Air is engaged in international air transport services with License to Transact Business in the Philippines issued by the SEC. For the year 2010, petitioner provided room accommodations and food and beverage services to Delta Air pilots and cabin crew during flight layovers in the Philippines in accordance with Delta Air's Hotel Room Agreement 106750 effective October 1, 2010 to September 30, 2013. Prior to October 1, 2010, petitioner provided hotel services to Northwest Airlines pilots and cabin crew per Hotel Service Agreement Contract No. BH697304 effective October 1, 2008 to September 30, 2010.

Petitioner directly billed Delta Air for the services rendered, inclusive of VAT. Delta Air, in return, paid for the said hotel services considering the same as essential business expense of the airline.

Although not a party to the Agreement between petitioner and Delta Airlines, he knew that it was duly executed by the signatories therein having received a copy thereof as part of his duty and responsibility.

The witness further clarified that Delta Air paid VAT because the BIR insisted that the subject transactions were subject to VAT. He added that Delta Air filed a claim for refund with the BIR and also requested for a BIR Ruling, but both were denied.

In his Supplemental Judicial Affidavit, Atty. Veneracion III declared that petitioner is engaged in air transport business and had been issued a License to Transact Business in the Philippines by the SEC and a Foreign Air Operator's Operation Specification by Civil Aviation Authority of the Philippines. Delta Air is registered with the BIR, but it is not a registered VAT taxpayer, thus, it has no output VAT against which the 12% input VAT can be offset. For the same reason, Delta Air cannot file any claim for refund of any unutilized input VAT. Also being an international airline, it cannot realize any income benefit because it is taxed on its Gross Philippine Billings, any additional cost or expense such as the 12% input VAT is irrelevant in the computation of its income tax.

When informed by petitioner about its remittance to the BIR of the 12% VAT for the hotel services it rendered to Delta Air during flight layover in Manila in 2010, he advanced that such imposition was of doubtful validity. Delta Air did not enjoy any tax benefit from the 12% VAT collected from it by petitioner.

Witness **Venus T. Villarosa**, through her Judicial Affidavit, stated that from July 2010 to January 2013, she was petitioner's Tax Accountant. She is presently its Income Auditor since February 2013. Part of her duty is to ensure that petitioner's tax obligations are paid and that all other BIR requirements are complied with.

For the period July to December 2010, she prepared petitioner's Monthly and Quarterly VAT Returns and ensured that they were filed and the corresponding tax thereon were timely paid through the BIR Electronic Filing and Payment System (EFPS). She also made sure that petitioner's Monthly Summary List of Sales for the year 2010 was submitted with the customer's name, TIN, address, amount of transaction and the corresponding VAT.

Based on petitioner's Summary List of Sales and Quarterly VAT Returns for taxable year 2010, the total sales and output VAT on sales made to Delta Air amounted to Php31,731,431.39 and Php3,807,771.77 respectively. The said documents were based on petitioner's various official receipts and invoices issued for the hotel services it rendered to Delta Air for taxable year 2010. However, Official Receipt Number 28684 in the amount of Php3,281,502.00 was in the name of Northwest Airlines as it was issued prior to the merger. Although not a signatory to the official receipt, she knew that there were separate receipts for the VAT component, which was paid by their client but remitted by petitioner to the BIR.

Petitioner paid the total VAT of Php3,807,771.77 pertaining to its services rendered to Delta Air. The first payment was made on July 26, 2010.

She opined that petitioner is entitled to a refund because the BIR wrongfully collected the VAT paid by Delta Air for transactions that were zero-rated.

Petitioner's Corporate Secretary and In-house Counsel since 2007, **Atty. Noel M. Malaya**, declared in his Judicial Affidavit that he handles petitioner's corporate records, attends to all its board meetings, prepares the minutes of board meetings, reviews all its contracts and gives legal advices to its corporate officers and personnel.

He reviewed the Hotel Room Agreement 106750 between Delta Air and petitioner. Section 4(b), page 4 thereof provides that petitioner shall directly charge the fees to Delta Air and not to the individuals availing of the said hotel services. The agreement shall be effective from October 1, 2010 until September 30, 2013.

Prior to Hotel Room Agreement 106750, petitioner executed a similar contract with Northwest Airlines, Inc. denominated as Hotel Service Agreement Contract No. BH697304, effective October 1, 2008 until September 30, 2010. He reviewed the said contract after it was signed by petitioner's General Manager Jonathan Crook. After the original contract was signed in the Philippines, a copy thereof was sent to the other party abroad for signature, then sent back to the Philippines for filing.

Per practice, petitioner keeps only the hard copies of the current contracts with its various clients due to office space restrictions. However, it maintains scanned or electronic copies of terminated contracts. Thus, petitioner only has the copy of Hotel Room Agreement 106750 since it is the current contract.

After petitioner rested, respondent submitted the case for decision *sans* presentation of any evidence in support of her position.

On August 15, 2014, the case was deemed submitted for decision."

On August 14, 2015, this Court's Third Division rendered the assailed Decision.[6] On September 4, 2015, petitioner filed its Motion for Reconsideration (Re: Decision dated 14 August 2015).[7] Consequently, on December 10, 2015, the Court's Third Division rendered the assailed Resolution.

On January 20, 2016, petitioner filed the instant Petition for Review (Re: Decision dated 14 August 2015 and Resolution dated 10 December 2015 of the Third Division, Court of Tax Appeals).[8] On February 26, 2016, respondent filed her Comment (Re: Petition for Review Dated January 18, 2016).[9] On March 17, 2016, the Court directed the parties to submit their Memoranda.[10] Petitioner filed its Memorandum[11] on April 22, 2016 while respondent adopted her Comment in lieu of filing a Memorandum.[12]

On May 12, 2016, the case was submitted for decision.[13] Hence, this Decision.

THE ISSUES

Petitioner raised the following grounds in support of its Petition: *Ju*

[6] See Note 1.
[7] Division Docket, Vol. IV, pp. 1513-1530.
[8] Court *En Banc* Docket, pp. 38-67.
[9] Court *En Banc* Docket, pp. 105-115.
[10] Resolution dated March 17, 2016, Court *En Banc* Docket, pp. 118-119.
[11] Court *En Banc* Docket, pp. 125-163.
[12] Manifestation filed on April 8, 2016, Court *En Banc* Docket, pp. 120-123.
[13] Resolution dated May 12, 2016, Court *En Banc* Docket, pp. 165-166.

"A.

The CTA-Division erred in finding that Petitioner is NOT entitled to its refund claim in the aggregate amount of Php3,807,771.77, representing its erroneously paid/illegally collected VAT for the four quarters of taxable year 2010.

B.

The CTA-Division erred in finding that Petitioner's judicial claim for the second quarter of 2010, as per the original return, were filed beyond the prescriptive period, and must therefore be disallowed."

THE COURT'S RULING

We deny the Petition.

Petitioner must comply with BIR Ruling No. 99-2011 dated April 6, 2011 and RMC No. 46-2008, as valid interpretations of Section 108(B)(4) of the NIRC of 1997, as amended, in relation to Section 4.108-5(b)(4) of RR No. 16-2005 and RMC No. 031-11

Petitioner argues that it only needs to satisfy two (2) requisites in order for its transaction with Delta Air to qualify for zero-rating. These requisites, pursuant to Section 108(B)(4) of the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended), are the following:

1. That the service is performed or rendered in the Philippines by a VAT-registered service provider; and

2. That the service is rendered to persons engaged in international shipping or international air transport operations.

Petitioner interposes said argument notwithstanding the existence of Section 4.108-5(b)(4) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, BIR Ruling No. 099-2011 dated April 6, 2011, Revenue Memorandum Circular (RMC) No. 046-08 and RMC No. 031-11.

Section 4.108-5(b)(4) of RR No. 16-2005 provides:

"**SEC. 4.108-5.** *Zero-rated Sale of Services.* –

xxx xxx xxx

(b) Transactions subject to Zero Percent (0%) VAT Rate. – The following services performed in the Philippines by a VAT-registered person shall be subject to zero-percent (0%) VAT rate:

xxx xxx xxx

(4) Services rendered to persons engaged in international shipping or air transport operations, including leases of property for use thereof: *Provided*, however, That the services referred to herein shall not pertain to those made to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same being subject to twelve percent (12%) VAT under Sec. 108 of the Tax Code starting February 1, 2006."

BIR Ruling No. 099-2011 dated April 6, 2011 provides:

"the services provided by the Hotel to its clients engaged in international air transport operations pertain to room accommodations and food and beverage services. As they are rendered within the Hotel's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating. Such being the case, the sale of the foregoing services by the Hotel is not zero rated, but is appropriately subject to the 12% VAT."

RMC No. 046-08 provides:

"SUBJECT: Clarification of Issues Concerning Common Carrier by Air and Their Agents Relative to the Revenue and Receipt from Transport of Passengers, Goods/Cargoes and Mail, and from Excess Baggage

xxx xxx xxx

Q-11: Are sale of goods, supplies, equipment, fuel and services to persons engaged in international air transport operation subject to VAT?

A-11: The sale of goods, supplies, equipment, fuel and services (including leases of property) to the common carrier to be used in its international air transport operation is zero-rated. *Provided*, that the same is limited to goods, supplies, equipment, fuel and services pertaining to or attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port; *Provided*, further, that if any portion of such fuel, equipment, goods or supplies and services is used for purposes other than mentioned in this paragraph, such portion of fuel, equipment, goods, supplies and services shall be subject to 12% VAT."

Finally, RMC No. 031-11 provides:

"Based on the foregoing, in order to qualify for zero-rating, the services rendered by a VAT-registered person to a person engaged in international air transport operations must pertain to or must be attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any port in the Philippines.

Accordingly, applying Section 108(B)(4) of the 1997 Tax Code, as amended, in connection with Section 4.108-5(b)(4) of Revenue Regulations (RR) No. 16-2005, as amended by RR 4-2007, the services provided by hotels to their clients engaged in international air transport operations pertaining to room accommodations and food and beverage services should be subject to the 12% VAT."

In the case of *Delta Air Lines, Inc. v. Hon. Sec. Cesar V. Purisima*,[14] the Court *En Banc* rejected Delta Air's position that BIR Ruling No. 99-2011 dated April 6, 2011, Secretary of Finance Letter dated September 8, 2011 and RMC No. 46-2008 should be declared void, and that the sale of services to Delta Air for the accommodation of its pilots and crew members during flight layovers in the Philippines should be subject to zero-rating. Speaking through Associate Justice Esperanza R. Fabon-Victorino, the Court *En Banc* explained that:

[14] CTA EB No. 1113, September 10, 2015, penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Roman G. Del Rosario dissenting.

"It is therefore clear that the services performed in the Philippines by a VAT-registered person to persons engaged in international shipping or air transport operations, including leases of property for use thereof are generally subject to zero percent (0%) VAT. However, RR No. 16- 2005, as amended by RR No. 4-2007, provides that when the services performed in the Philippines by a VAT registered person are rendered to common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, the same shall already be subject to twelve percent (12%) starting February 1, 2006.

It is undisputed that the services provided by the Hotel to petitioner were rendered within the Hotel's premises, they have no direct connection with the transport of goods or passengers, and as such, they cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port to be entitled to zero-rating.

The BIR merely interpreted the law and the rules in the assailed BIR Ruling and held that the sale of services by the Hotel to petitioner is subject to the 12% VAT given that the services provided by the Hotel to petitioner pertain to room accommodations and food and beverage services to its pilots and crew members during flight layovers in the Philippines, which have no direct connection with the transport of goods or passengers. Hence, the same cannot be considered as services directly attributable to the transport of goods and passengers from a Philippine port directly to a foreign port entitled to zero-rating.

Clearly, the interpretation of respondent CIR was well within the parameters of what was provided by the law and rules from which such ruling was based. Finally, the Court recognizes the doctrine that interpretations of administrative agencies in charge of enforcing a law are entitled to great weight and consideration by the courts, unless such interpretations are in a sharp conflict with the governing statute or the Constitution and other laws, which is not obtaining in the present case."

As it stands, BIR Ruling No. 99-2011 dated April 6, 2011 and RMC No. 46-2008 remain to be valid interpretations of Section 108(B)(4) of the NIRC of 1997, as amended, in relation to Section 4.108-5(b)(4) of RR No. 16-2005 and RMC No. 031-11.

Hence, the Court sees no cogent reason to deviate from the conclusion of the Court in Division that petitioner should satisfy the requisites provided for under Section 108(B)(4) of the NIRC of 1997, as amended, in relation to Section 4.108-5(b)(4) of RR No. 16-2005, BIR Ruling No. 99-2011 dated April 6, 2011, RMC No. 46-2008 and RMC No. 031-11.

Thus, in order for petitioner's sale of services to Delta Air to qualify for zero-rating, it must comply not only with the requisites provided for under Section 108(B)(4) of the NIRC of 1997, as amended. Petitioner must likewise prove that: (1) Said services pertain to or must be attributable to the transport of goods and passengers; (2) The transport of goods and passengers must emanate from a port in the Philippines; (3) The transport of goods and passengers must be directly to a foreign port; and (4) The common international air transport carrier must not dock or stop at any port in the Philippines.

Petititioner failed to satisfy the requisites for its transaction with Delta Air, Inc. to qualify for zero-rating

Petitioner's room accommodations and food and beverage services to Delta Air do not entirely pertain to or are not attributable to Delta Air's transport of goods or passengers

Paragraph 1 of petitioner's Hotel Room Agreement 106750[15] (Agreement) with Delta Air provides:

> "1. Premises and Services. – Hotel agrees to provide room accommodations and other hotel services at certain premises located at Corner of Ayala & Makati Avenues, Makati City, 1226 Philippines (the "**Premises**") to Delta Guests for consideration paid by Delta to Hotel pursuant to the terms of this Agreement. For the purpose of this Agreement, "**Delta Guests**" shall include the following category of persons: (a) Scheduled Delta flight crews and scheduled flight crews or **any Affiliate of Delta** ("**Flight Crew Guests**"); and (b) **Delta employees on company business; non-crew employees of subsidiaries or affiliates of Delta; contractors of any of the foregoing entities engaged in work for any of the same**; and

[15] Exhibit "M", Court Division Docket, Vol. III, pp. 1057-1066.

> any third party for whom occupancy is authorized by Delta or by Hotel on Delta's behalf, including parties holding a Delta voucher (e.g., inconvenienced passengers) (**"Non-Crew Guests"**). **"Affiliate" means any individual, corporation, partnership, association, or business that directly or indirectly through intermediaries, controls, is controlled by or is under common control with Delta.**"*(Emphasis supplied)*

A reading of the Agreement reveals that petitioner is obliged to render services not only to Delta Air's flight crew, but also to Delta Air's employees on company business, non-crew employees of Delta Air's subsidiary or affiliates, and contractors of any of Delta Air's subsidiary or affiliates engaged in work for these entities.

In other words, petitioner's Agreement with Delta Air does not merely cover Delta Air's flight crew. The obligation of petitioner to provide hotel services transcends even to individuals who are mere accommodation guests of Delta Air, *i.e.*, non-crew employees of subsidiaries or affiliates of Delta Air and contractors of any of Delta Air's subsidiaries or affiliates performing work for such subsidiaries and affiliates. Delta Air guests, as per the Agreement, even cover employees on company business, which business may or may not pertain to or is attributable to Delta Air's transport of goods or passengers.

Considering the foregoing, *We* find that petitioner's service to Delta Air does not pertain to or is not attributable to Delta Air's transport of passengers or goods.

Petitioner failed to present evidence to prove the following requisites: (1) The transport of goods and passengers must emanate from a port in the Philippines; (2) The transport of goods and passengers must be directly to a foreign port; and (3) The common international air transport carrier must not dock or stop at any port in the Philippines.

A careful evaluation of the pieces of evidence presented by petitioner reveals that it did not present any evidence to prove these remaining requisites: (1) The transport of goods and passengers must emanate from a port in the Philippines; (2) The transport of goods and passengers must be directly to a foreign port; (3) The common international air transport carrier must not dock or stop at any port in the Philippines.

Additionally, *We* agree with the Court in Division that following the Destination Principle and Cross Border Doctrine, petitioner's transaction with Delta Air must be subject to 12% VAT. Thus:

> "Furthermore, Section 108(B)(4) of the NIRC of 1997, as amended, should be read in conjunction with the Destination Principle and Cross Border Doctrine to which the Philippine VAT System adheres. According to the Destination Principle, goods and services are taxed only in the country where these are consumed. In connection with the said principle, the Cross Border Doctrine mandates that no VAT shall be imposed to form part of the cost of the goods destined for consumption outside the territorial border of the taxing authority. Precisely, under our VAT Law, goods, property or services destined, used or consumed in the Philippines are subject to the 12% VAT whereas those destined, used or consumed abroad are subject to 0% VAT.
>
> The services rendered to the pilots and cabin crew of Delta Air did not cross the Philippine Territory. They could not also be considered as services directly used in connection with international air transport operation unlike in the case of general sales agents of international airlines whose services are directly connected or attributable to the transport of goods or passengers from the Philippines to a foreign port."[16]

Considering the foregoing, *We* are constrained to declare that petitioner's transaction with Delta Air is not subject to zero-rating.

The Court in Division is correct in disallowing petitioner's claim for refund involving the first quarter of taxable year 2010 due to prescription. However, petitioner's claim for refund for the second quarter of taxable year 2010 has not yet prescribed

The Court shall first resolve the issue pertaining to petitioner's claim for refund involving the second quarter of taxable year 2010.

[16] See Note 1, pp. 1510-1511.

Petitioner asserts that the original date of its payment for the second quarter was on July 26, 2010 and not July 23, 2010. Considering that it filed its administrative claim on June 19, 2012 and its judicial claim on July 24, 2010, petitioner contends that its claim for refund involving the subject second quarter was timely filed.

We agree with petitioner. Revenue Memorandum Order (RMO) No. 19-2002 pertinently provides:

> "(J) Taxes paid by the taxpayer through e-payment shall be deemed paid after a Confirmation Number has been issued by the **EFPS** AAB concerned to the taxpayer and BIR. In addition, Bank Acknowledgment Number shall be issued by the AAB to the BIR to confirm that the taxpayment has been credited to the account of the government **or recognized as revenue (internal revenue tax collection) by the Bureau of Treasury**."

In the instant case, records show that BPI issued the Confirmation Number on July 26, 2010. Pursuant to the afore-cited provision of RMO No. 19-2002, petitioner is correct in arguing that its e-payment was deemed paid not on July 23, 2010 but on July 26, 2010 when the Confirmation Number was sent by BPI.

With respect however to the first quarter, the Court *En Banc* observes that petitioner did not contest the Court in Division's ruling that its claim for refund for the first quarter of 2010 had already prescribed. At any rate, since petitioner's e-payment was deemed paid on April 26, 2010 through EFPS pursuant to RMO No. 19-2002, the 2-year period for filing its claim for refund necessarily ends on April 26, 2012. Considering that petitioner filed its judicial claim only on July 24, 2012, barely 3 months had already lapsed after the 2-year period. Hence, petitioner's claim for the first quarter of 2010 is already barred by prescription.

Still, even if petitioner's claim for refund involving the second quarter of 2010 had not yet prescribed, petitioner's claim must fail for failure to satisfy the requisites for zero-rating, as discussed above.

WHEREFORE, in view thereof, the instant Petition for Review is **DENIED**, for lack of merit.

SO ORDERED.

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

WE CONCUR:

(With Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

(On Leave)
CAESAR. A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

(On Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen

(I Join P.J. Del Rosario's Concurring and Dissenting Opinion)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

MANILA PENINSULA HOTEL, INC., Petitioner,	**CTA EB NO. 1408** (CTA Case No. 8519)
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- versus -	**DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, *and* RINGPIS-LIBAN, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	
	Promulgated:
	JUL 12 2016 4:02 p.m.

x- x

CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.*:**

I agree with my esteemed colleague in holding that petitioner's claim for refund involving the first quarter of 2010 is already barred by prescription. The point of my dissent relates to the *ponencia's* affirmation of the assailed Decision pertaining to petitioner's claim for the second quarter of 2010 wherein it was ruled that petitioner has failed to satisfy the requisites for zero-rating.

While I agree with the *ponencia's* observation that petitioner's Hotel Room Agreement with Delta Air obliged petitioner to render its services both to Delta Air Lines, Inc.'s ("Delta Air") flight crew members and non-crew employees of Delta Air's subsidiary and affiliates, the same should not, however, result to an outright conclusion that petitioner's services to Delta Air are not attributable to Delta Air's transport of goods or passengers. Said conclusion should appropriately be applicable only to services rendered to non-crew employees but not to those rendered to **flight crew during flight layovers** in the Philippines. I submit that petitioner's services provided to Delta Air's flight crew, as shown in various invoices, during flight layovers qualify for zero-rating.

Truth be told, the issue on zero-rating relative to services rendered to entities engaged in international air transportation is not of first impression. This very same issue was involved in CTA EB No. 1113 entitled *Delta Air Lines Inc. vs. Hon. Sec. Cesar V. Purisima (in his capacity as incumbent Secretary of The Department of Finance) and Hon. Kim S. Jacinto-Henares (in her capacity as Incumbent Commissioner of Internal Revenue).*[1]

In this regard, I quote the pertinent portion of my Dissenting Opinion in *Delta Air Lines, Inc., supra*, which reads as follows:

> "xxx I submit that services pertaining to room accommodations, food and beverage to pilots and crew members during flight layovers in the Philippines rendered by hotels are directly related to air transport operations and are thus subject to VAT at 0%, based on the following ratiocinations:
>
> - Under Section 108(B)(4) of Republic Act (RA) No. 8424, as amended by RA No. 9337, services rendered to <u>**persons engaged in international shipping or international air transport operations**</u>, including lease of property for their use, are subject to VAT at 0%;
>
> - RA No. 9337 and Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, do not specifically enumerate the types of services that must be rendered to persons engaged in international air transport operation to qualify for VAT zero-rating. In the absence of a specific enumeration of the type of services, and for as long as the services do not pertain to the transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines, services rendered to persons engaged in international shipping or international air transport operations, which are directly used in, or attributable to the international transport of goods and passengers, shall be subject to VAT at 0%;

[1] Dated September 10, 2015.

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- Prior to its amendment by RA No. 9337, Section 108(B)(4) of RA No. 8424 provides that services rendered to vessels engaged exclusively in international shipping shall be subject to VAT at zero percent (0%). RA No. 9337 changed the phrase "services rendered to vessel" to "services rendered to persons engaged in international shipping or international air transport operations. Thus, it is of no moment if at the time the hotel services were rendered that the vessel or aircraft is in the Philippine territory. **The services that are being subjected to VAT at 0% rate are supposedly rendered not to the vessel but to the persons engaged in international shipping or international air transport operations**;

- Since transport of passengers and cargo by air or sea vessels from the Philippines to a foreign country is specifically subject to 0% VAT under Section 108(B)(6) of RA No. 8424 as amended by RA No. 9337, persons engaged in international shipping or international air transport operations will, generally, not have any use for the **input VAT** that will be passed on to them, if services rendered to them will be subjected to VAT. This situation will not be consistent with the legislative intent of reducing the costs of international shipping or international air transport as the 12% input VAT paid by persons engaged in international shipping or international air transport for services rendered to them will be inevitably passed to their customers as part of their ticket price;

- Revenue Memorandum Circular (RMC) No. 046-08 dated February 1, 2008 states that the VAT zero-rating "is limited to goods, supplies, equipment, fuel and services pertaining to or attributable to the transport of goods and passengers from a port in the Philippines directly to a foreign port without docking or stopping at any other port in the Philippines to unload passengers and/or cargoes loaded in and from another domestic port". **Parenthetically, pilots, flight attendants and cabin crew of persons engaged in international air transport operations are indispensable in air transport operations.** Thus, services for accommodation/lodging rendered to these personnel (during flight layovers in the Philippines) are services rendered to persons engaged in international air transport operations which are attributable to the international transport of goods and passengers; and

- The Civil Aviation Regulations Part 8 on Operations issued by the Civil Aviation Authority of the Philippines mandates petitioner to provide accommodation/lodging of its pilots and cabin crew members during the flight layovers in the Philippines. Petitioner is engaged in long haul flights from the USA to the Philippines. In fact, the pertinent regulations provide for flight time, duty and rest periods of flight and cabin crews, *viz*:

> "8.11.1.10.2 FLIGHT TIME, DUTY AND REST PERIODS: AIRCRAFT TYPE CERTIFICATED FOR TWO PILOTS AND ONE OTHER FLIGHT CREW MEMBER
>
> (a) No scheduled and non-scheduled international operator may schedule any flight crew member and no flight crew member may accept an assignment for flight time in commercial flying if that flight crew member's total flight time in all flying will exceed:
>
> (1) 12 hours during any 24 consecutive hours;
> (2) 120 hours during any 30 consecutive days;
> (3) 300 hours during any 90 consecutive days; or
> (4) 1,000 hours during any calendar year.
>
> (b) A rest period of twice the number of hours flown since the last rest period or 12 hours, whichever is greater, shall be scheduled following any flight segment.
>
> (c) If a flight crew member has flown 20 or more hours during any 48 consecutive hours or 24 or more hours during any 72 consecutive hours, he must be given at least 18 hours of rest before being assigned to any duty with the operator.

To be sure, petitioner's pilots and cabin crew are not allowed to immediately fly back to the USA upon the aircraft's arrival in the Philippines; as afore-stated, the pilots are required to take a rest for at least twice the number of hours flown and 18 hours for cabin crew. Since petitioner is duty bound to provide accommodation and lodging to its pilot and crew, the services rendered for such purpose must necessarily be attributable to the "international air transport operations" within the context of Sec. 108(B)(4) of the NIRC of 1997, as amended. xxx"

For all the foregoing, I vote to PARTIALLY GRANT the Petition for Review and to REMAND the case to the Court in Division to determine the amount refundable to petitioner relative to its services rendered to Delta Air's flight crew during flight layovers in the Philippines.

ROMAN G. DEL ROSARIO
Presiding Justice