**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

-versus-

**MANULIFE DATA SERVICES, INC.,**
*Respondent.*

**CTA *EB* NO. 2183**
(CTA Case No. 9126)

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**MANULIFE DATA SERVICES, INC.,**
*Petitioner,*

-versus-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent,*

**CTA *EB* NO. 2191**
(CTA Case No. 9126)

*Members:*

**DEL ROSARIO**, *PJ,*
**UY**,
**RINGPIS-LIBAN**,
**MANAHAN**,
**BACORRO-VILLENA**,
**MODESTO-SAN PEDRO**,
**REYES-FAJARDO**,
**CUI-DAVID**, *and*
**FERRER-FLORES**, *JJ.*

Promulgated:
MAR 3 1 2023 2:35 pm

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# DECISION

***CUI-DAVID, J.:***

Before the Court *En Banc* are the *Petitions for Review* filed by the Commissioner of Internal Revenue (**"CIR"**)[1] and Manulife

[1] Dated 11 December 2019, received by the Court on 13 December 2019; *Rollo*, CTA *EB* No. 2183, pp. 5-14.

Data Services, Inc. ("**MDSI**")[2] under Section 3(b), Rule 8,[3] in relation to Section 2(a)(1), Rule 4[4] of the Revised Rules of the Court of Tax Appeals[5] ("**RRCTA**"), assailing the Decision dated 5 July 2019[6] ("**assailed Decision**") and Resolution dated 7 November 2019[7] ("**assailed Resolution**") of the Court's Special Third Division ("**Court in Division**") in CTA Case No. 9126 entitled *Manulife Data Services, Inc. v. Commissioner of Internal Revenue.*

## THE PARTIES

The CIR has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code ("**NIRC**") or other laws or portions thereof administered by the Bureau of Internal Revenue ("**BIR**").[8] He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On the other hand, MDSI is a Regional Operating Headquarters ("**ROHQ**") duly licensed by the Securities and Exchange Commission ("**SEC**") under SEC Certificate of Registration and License No. FS200603505,[9] issued on 3 March 2006. It is also registered with the BIR as a Value-Added Tax ("**VAT**") entity under Certificate of Registration No. OCN3RC0000421626 dated 9 March 2006.[10]

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[2] Dated 9 December 2019, received by the Court on 10 December 2019, *Rollo*, CTA *EB* No. 2191, pp. 9-21.
[3] *Section 3. Who May Appeal; Period to File Petition.* — (a) x x
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[4] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture.
[5] A.M. No. 05-11-07-CTA.
[6] Division Docket, Vol. 7, pp. 3183-3255; penned by Associate Justice Ma. Belen M. Ringpis-Liban, with Associate Justice Esperanza R. Fabon-Victorino, concurring.
[7] *Id.*, pp. 3290-3297.
[8] Section 4, NIRC, as amended.
[9] Exhibit "P-1", Division Docket, Vol. 4, p. 1735.
[10] Exhibit "P-2-a", *id.*, p. 1764.

MDSI is licensed "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; logistic services; research and development services and product development; technical support and maintenance; data processing and communication and business development."[11]

## THE FACTS

The following are the facts as stated in the assailed Decision, to wit:[12]

> Petitioner [MDSI] alleges that in CY 2013, it generated VAT zero-rated sales for its services to foreign clients and it was paid in US Dollars (USD) inwardly remitted into the Philippines. It claims that the VAT zero-rated sales for CY 2013 amounted to a total of ₱2,152,529,797.47, broken down as follows:

| Taxable Period (CY 2013) | Zero-Rated Sales |
|---|---|
| 1st Quarter | ₱ 479,724,554.50 |
| 2nd Quarter | 513,130,554.25 |
| 3rd Quarter | 561,305,225.32 |
| 4th Quarter | 598,369,463.40 |
| Total | ₱ 2,152,529,797.47 |

> On March 30, 2015, petitioner filed with the BIR RDO No. 38 an administrative claim for refund or issuance of tax credit certificate of its alleged excess input VAT amounting to ₱60,480,919.18 for the whole period of CY 2013.

The CIR did not decide on MDSI's administrative claim for refund.

## PROCEEDINGS BEFORE THE COURT IN DIVISION[13]

MDSI filed a *Petition for Review* before the Court in Division on 26 August 2015. The CIR filed his *Answer* on 26 October 2015.

[11] Exhibit "P-1-c", Division Docket, Vol. 4, p. 1735.
[12] Annex "A" of the Petition for Review, *Rollo*, CTA *EB* No. 2183, pp. 19 to 91; Annex "A" of the Petition for Review, *Rollo*, CTA *EB* No. 2191, pp. 31-104.
[13] *Id.*

The CIR filed his *Pre-Trial Brief* on 18 January 2016, while MDSI's *Pre-Trial Brief* was submitted on 3 March 2016. The Pre-Trial Conference was held on 29 March 2016.

The parties filed their Joint Stipulation of Facts & Issues ("**JSFI**") on 8 April 2016. The Court in Division issued its *Pre-Trial Order* dated 6 May 2016.

The Court commissioned Mr. Jerome Antonio B. Constantino on 5 July 2016 as an Independent Certified Public Accountant ("**ICPA**"). He issued his report on 4 August 2016 and a supplemental report on 22 December 2016.

Trial proceeded.

During the trial, MDSI presented as witnesses Ms. Agnes Neria, Ms. Lourdes Rosario Mantaring, and ICPA Jerome Antonio B. Constantino, who testified on direct examination by way of their respective Judicial Affidavits.

MDSI filed its Formal Offer of Evidence ("**FOE**") on 28 September 2016 and Supplemental FOE on 10 April 2017. The Court in Division resolved MDSI's FOE on 5 December 2017.

On 11 January 2018, MDSI filed a *Motion for Reconsideration (Re: Resolution dated 05 December 2017) with Motion to Recall Witness*, which the Court in Division denied.

During the hearing on 3 April 2018, the CIR's counsel manifested that he had no evidence to present.

MDSI filed its *Memorandum* on 24 April 2018, while the CIR did not file a *Memorandum*. As such, the Court in Division submitted the case for decision on 9 July 2018.

On 5 July 2019, the Court in Division promulgated the assailed Decision partially granting MDSI's petition.[14] The dispositive portion reads:

[14] *Id.*; Division Docket, Vol. 7, pp. 3183-3255.

> **WHEREFORE**, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱1,305,567.11** representing petitioner's unutilized input VAT attributable to its zero-rated sales for the four quarters of calendar year 2013.
>
> **SO ORDERED.**

On 9 August 2019, the CIR filed his *Motion for Partial Reconsideration,* [15] against which MDSI filed a *Comment/Opposition (Re: BIR's Motion for Partial Reconsideration dated 07 August 2019)* on 18 September 2019.[16]

On 14 August 2019, MDSI filed its *Motion for Reconsideration (Re: Decision dated 05 July 2019),*[17] against which the CIR failed to file a comment.[18]

On 7 November 2019, the Court in Division promulgated the assailed *Resolution*[19] with the following dispositive portion:

> **WHEREFORE**, finding no cogent reason to reverse the ruling in the assailed Decision, respondent's **Motion for Partial Reconsideration** and petitioner's **Motion for Reconsideration (Re: Decision dated 05 July 2019)** are **DENIED** for lack of merit.
>
> **SO ORDERED.**

## PROCEEDINGS BEFORE THE COURT *EN BANC*

On 27 November 2019, the CIR filed a *Motion for Extension of Time to File Petition for Review,*[20] which was granted in a *Minute Resolution* dated 29 November 2019.[21] Accordingly, the CIR was given a final and non-extendible period of fifteen (15) days from 28 November 2019, or until 13 December 2019, to file his Petition for Review.

[15] Division Docket, Vol. 7, pp. 3262-3267.
[16] *Id.*, pp. 3280-3286.
[17] *Id.*, pp. 3268-3274.
[18] Records Verification Report dated 14 October 2019, *id.*, p. 3288.
[19] *Id.*, pp. 3290-3297.
[20] *Rollo*, CTA *EB* Case No. 2183, pp. 1-3.
[21] *Id.*, p. 4.

On 13 December 2019, the CIR filed his *Petition for Review.*[22]

On the other hand, MDSI filed a *Motion for Extension of Time (Re: Filing of Petition for Review)* on 4 December 2019,[23] which was likewise granted in a *Minute Resolution* dated 6 December 2019.[24] Accordingly, MDSI was given a final and non-extendible period of fifteen (15) days from 5 December 2019, or until 20 December 2019, to file its Petition for Review.

On 10 December 2019, MDSI filed its *Petition for Review.*[25]

On 16 December 2019, the Court issued a *Minute Resolution* consolidating CTA *EB* No. 2191 with CTA EB No. 2183.[26]

On 16 January 2020, the Court issued a *Resolution* ordering MDSI to submit the original true copy of the Assistant Secretary's Certificate.[27]

On 28 January 2020, MDSI filed a *Motion for Comparison of Documents (Re: Resolution dated 16 January 2020)*,[28] stating that it only has one (1) original copy of the Secretary's Certificate, which it will use for future tax refund claims. The Court granted MDSI's motion in its *Resolution* dated 2 March 2020.[29] The *Commissioner's Report* dated 13 March 2020 stated that the copy with the Court is a faithful reproduction of the original.[30]

In a *Resolution* dated 2 July 2020, both parties were directed to file their respective Comments.[31]

On 12 April 2022, MDSI filed its *Comment*,[32] while the CIR filed his *Comment* (*Re: Petitioner (Manulife Data Services Inc.)'s Petition for Review*) on 18 April 2022.[33]

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[22] *Id.*, pp. 5-13.
[23] *Id.*, pp. 1-4.
[24] *Id.*, p. 8.
[25] *Id.*, pp. 9-18.
[26] *Rollo*, CTA *EB* Case No. 2183, p. 100.
[27] *Id.*, pp. 102-104.
[28] *Id.*, pp. 105-108.
[29] *Id.*, pp. 112-114.
[30] *Id.*, p. 115.
[31] *Id.*, pp. 126-128.
[32] *Id.*, pp. 142-150.
[33] *Id.*, pp. 152-156.

Thus, on 24 May 2022, this Court issued a *Resolution* submitting the consolidated Petitions for Review for decision.[34]

Hence, this Decision.

## ISSUES

MDSI raised the following grounds for the allowance of its Petition for Review before the Court *En Banc*:

> Part of the disallowed zero-rated sales were sales made to The Manufacturers Life Insurance Company ("MLIC"), which amounted to ₱1,390,561,832.34.40. This amount was disallowed because there was no SEC Certificate of Non-Registration of Company issued to MLIC. Without the SEC Certificate of Non-Registration, the Honorable Division did not consider MLIC a non-resident foreign corporation not doing business in the Philippines. The sales to MLIC were then excluded in the computation of the proper amount of input VAT refund.
>
> This Petition invites the Honorable Court en banc to revisit whether a SEC Certificate of Non-Registration should count as the sole proof that a foreign corporation is not doing business in the Philippines, disqualifying the taxpayer from proving, with competent evidence, that the nonresident service recipient is not doing business in the Philippines.

On the other hand, the CIR forwards the following grounds in his *Petition for Review*:

> THE HONORABLE COURT A QUO ERRED IN RULING THAT RESPONDENT'S ALLEGED INPUT TAX ATTRIBUTABLE TO ITS ZERO-RATED SALES FOR THE PERIOD JANUARY 1, 2013 TO DECEMBER 31, 2013 REMAINED UNUTILIZED DESPITE BEING CARRIED OVER TO THE SUCCEEDING PERIODS.
>
> THE HONORABLE COURT A QUO ERRED IN RULING THAT RESPONDENT'S INPUT TAX IN THE AMOUNT OF ₱1,305,567.11 IS DIRECTLY ATTRIBUTABLE TO ITS ALLEGED ZERO-RATED SALES.

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[34] *Id.*, pp. 159-160.

**MDSI's Petition for Review**
**CTA *EB* No. 2191**

**MDSI'S ARGUMENTS**

MDSI contends that its sale to MLIC qualifies as a zero-rated transaction under Section 108 of the NIRC of 1997, as amended. It also contends that the consularized *Letters Patent of Amalgamation* issued by Canadian authorities proves that MLIC is a corporation duly registered and existing under the laws of a foreign jurisdiction.[35]

It avers that although at one point in time, MLIC established a branch locally,[36] zero-rating also applies to sales to "a person engaged in business conducted outside the Philippines." It posits that the law does not ask whether the entity resides or is doing business in the Philippines; all that is required is that the entity is engaged in business outside the Philippines.[37]

Further, MDSI alleges that MLIC has filed with the Insurance Commission for the authority to close its Philippine business and withdraw its license.[38]

The CIR contends that MDSI failed to exhibit a SEC Certificate of Non-Registration of Company which would have satisfied the requirement that the service-recipient is not engaged in trade or business within the Philippines. He further contends that at one point in time, MLIC established a branch locally, the MLIC-PH and that it would seem that MLIC-PH still had business in the Philippines during the taxable year 2013, bolstered by the fact that MLIC-PH's withdrawal of license was only approved on January 7, 2013. Thus, the alleged dissolution process only started at such time or approximate time.

[35] MDSI's Petition for Review, par. 20, *Rollo*, CTA *EB* No. 2191, p. 15.
[36] *Id.*, par. 21, *Rollo*, *id.*
[37] *Id.*, par. 22, *id.*
[38] *Id.*, par. 23, *id.*

**CIR's Petition for Review**
**CTA *EB* No. 2183**

**CIR'S ARGUMENTS**

The CIR argues that MDSI failed to overcome the burden that the subject input tax being claimed remained unutilized or has not been applied against any output tax for the current and succeeding quarters. He points to MDSI's failure to present all the VAT returns for the taxable year 2015. He contends that it is erroneous for the Court in Division to rule that the input VAT is unutilized based solely on the first quarter VAT return for the taxable year 2015.[39]

The CIR likewise points to the use of the phrase "directly attributable" in Section 112 of the NIRC of 1997, as amended.[40] He posits that the Court in Division erred in concluding that since respondent's reported sales were allegedly all zero-rated, the claimed input VAT is entirely attributable thereto. He suggests defining "directly attributable" as "arising from a particular source or cause."[41]

MDSI counters that under Section 110(B), attributable input taxes can be "refunded or credited ... subject to the provisions of Section 112; that it is the interrelation between Sections 110(B), 110(C), and 112 which requires a taxpayer to prove that it had deducted its claim from its accumulated excess input taxes; that since Section 110(C) requires a taxpayer to reduce its accumulated excess input taxes by the amount of its claim, the returns where the reduction is reported would be relevant; that it discharged this evidentiary obligation by presenting its Quarterly VAT Return for the First Quarter of 2015, where the deduction had been reported; that since MDSI reported the deduction of its entire claim in 2015 First Quarter return, the other returns would not bear a relation to the fact in issue; that if the returns for the second through fourth quarters of 2015 would rebut MDSI's claim, it is the CIR's duty and burden to present them; and, that MDSI has no duty to anticipate and preempt all possible rebuttals.

[39] CIR's Petition for Review, p. 4, *Rollo*, CTA *EB* No. 2183, p. 8.
[40] *Id.*, p. 5, *Rollo*, CTA *EB* No. 2183, p. 9.
[41] *Id.*, p. 6, *Rollo*, CTA *EB* No. 2183, p. 10.

## RULING OF THE COURT *EN BANC*

The Court *En Banc* finds no merit in the instant Petitions.

**The Court *En Banc* has jurisdiction over the instant Petitions.**

Before discussing the merits of the case, the Court *En Banc* shall first determine the timeliness of the filing of the instant Petitions.

On 7 November 2019, the Court in Division promulgated the assailed *Resolution* denying both parties' *Motions for Reconsideration.*[42] The CIR received the *Resolution* on 13 November 2019, while MDSI received its copy on 20 November 2019.

As provided under Section 3(b), Rule 8[43] of RRCTA, the CIR had until 28 November 2019 to file his *Petition for Review* before the Court *En Banc.* On the other hand, MDSI had until 5 December 2019 to do the same.

On 27 November 2019, within the reglementary period, the CIR filed a *Motion for Extension of Time to File Petition for Review,*[44] which the Court *En Banc* granted in a *Minute Resolution* dated 29 November 2019,[45] giving him until 13 December 2019 to file his *Petition for Review.*

On 13 December 2019, the CIR timely filed his *Petition for Review.*[46]

[42] Division Docket, pp. 400-406.
[43] Section 3. Who May Appeal; Period to File Petition. –
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[44] *Rollo*, CTA *EB* Case No. 2183, pp. 1-3.
[45] *Id.*, p. 4.
[46] *Id.*, pp. 5-13.

On the other hand, MDSI filed a *Motion for Extension of Time to File Petition for Review* on 4 December 2019, [47] which the Court *En Banc* likewise granted in a *Minute Resolution* dated 6 December 2019.[48] MDSI was given until 20 December 2019 to file its *Petition for Review*.

On 10 December 2019, MDSI timely filed its *Petition for Review*.[49]

On 16 December 2019, the Court issued a *Minute Resolution* consolidating MDSI and the CIR's Petition *for Review*.[50]

Having settled that the consolidated *Petitions* were timely filed, the Court *En Banc* rules that it has jurisdiction to take cognizance of the instant *Petitions* pursuant to Section 2(a)(1), Rule 4[51] of RRCTA.

We shall now proceed to discuss the merits.

**In CTA *EB* No. 2191**

**MDSI failed to prove that its sales of services to MLIC are qualified for zero rating.**

At the outset, the Court *En Banc* notes that MDSI's arguments in its *Petition for Review* are a mere rehash of the matters exhaustively discussed and considered by the Court in Division in the assailed *Decision* and *Resolution*. Nonetheless, the Court shall pass upon the arguments to fully settle the issues in this case.

Section 112 (A) and Section 108 (B) (2) of the NIRC of 1997, as amended, provide:

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[47] *Rollo*, CTA *EB* Case No. 2191, pp. 1-4.
[48] *Id.*, p. 8.
[49] *Id.*, pp. 9-18.
[50] *Rollo*, CTA *EB* Case No. 2183, p. 100.
[51] *Section 2. Cases Within the Jurisdiction of the Court En Banc.* — The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies — Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

> 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)*: ...
>
> SEC. 108. *Value-added Tax on Sale of Services and Use or Lease of Properties. -*
>
> ... ... ...
>
> *(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); ... .

The following essential elements must be present for a sale or supply of services to be subject to the VAT rate of zero percent (0%) under Section 108 (B) (2) above, to wit:

> 1. The recipient of the services is a foreign corporation, and the said corporation is doing business outside the Philippines, or is a non-resident person not engaged in business who is outside the Philippines when the services were performed;[52]

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[52] *Sitel Philippines Corporation (Formerly Clientlogic Phils., Inc.) v. Commissioner of Internal Revenue*, G.R. No. 201326, 8 February 2017; *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor*

2. The payment for such services were made in acceptable foreign currency accounted for in accordance with the Bangko Sentral ng Pilipinas (BSP) rules;[53]

3. The services fall under any of the categories under Section 108 (B) (2),[54] or simply, the services rendered should be other than "processing, manufacturing or repacking goods";[55] and,

4. The services must be performed in the Philippines by a VAT-registered person.[56]

MDSI argues[57] in its *Petition for Review* that:

19. Section 108 (B) (2) qualifies an entity to zero-rating if the service-recipient is either a person engaged in business conducted outside the Philippines or a non resident person not engaged in business who is outside the Philippines when the services are performed.

20. During calendar year 2013, the period subject of this case, MDSI rendered services to MLIC, a foreign corporation incorporated and doing business in Canada. MDSI presented MLIC's consularized charter documents. The consularized Letters Patent of Amalgamation, issued by Canadian authorities, proves MLIC is a corporation duly registered and existing under the laws of a foreign jurisdiction.

21. At one point in time, MLIC established a branch locally, The Manufacturers Life Insurance Company-Philippine Branch (MLIC-PH). A view considers the establishment of a branch as grounds to regard MLIC as a resident or doing business in the Philippines ... .

22. However, zero-rating also applies to sales to another category of service-recipient, "a person engaged in business conducted outside the Philippines." As worded, the law does not ask whether the entity resides or is doing business in the Philippines. All that is required is that the entity is "engaged in business conducted outside the Philippines."

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*Mindanao, Inc.*, G.R. No. 153205, 22 January 2007; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, 11 July 2012.

[53] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 153205, 22 January 2007; *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, G.R. No. 152609, 29 June 2005.

[54] *Commissioner of Internal Revenue v. American Express International, Inc. (Philippine Branch)*, supra.

[55] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, supra.

[56] Sec. 108 (B), NIRC of 1997, as amended.

[57] Petition for Review, *Rollo*, CTA *EB* Case No. 2191, pp. 15 to 17.

23. In any event MDSI has proved that MLIC is a nonresident not doing business in the Philippines. MDSI exhibited an application-letter MLIC-PH filed with the Insurance Commission on 26 December 2012 for authority to close its Philippine business and withdraw its license. The Insurance Commission approved the application. ...

24. Mr. Constantino in his Supplemental Independent CPA Report ... testified that MDSI had no subsequent dealings with MLIC-PH ... .

25. MLIC-PH's certification bolstered these proofs by declaring that it had no part in any transaction between MDSI and MLIC and that MLIC-PH and MDSI had no business with one another.

26. Hence, for the period of the claim, MLIC's Philippine branch was commercially inactive.... The entirety of MDSI's sales of ₱1,390,561,832.34 to MLIC were made to MLIC itself, a corporation registed and doing business in Canada. The lack of an SEC Certificate of Non-Registration does not alter the fact.

27. Textually, Section 108 (B) (2) zero-rates sales made to defined classes of service recipients. The Section does not zero-rate sales to those who happen to possess the right sort of SEC Certification... .

... ... ...

31. Overall, MDSI has satisfied the requirements to show MLIC is non-resident corporation not doing business in the Philippines. The sales made to MLIC in 2013 are zero-rated sales and should have been properly considered in the computation of the refundable amount of input VAT.

On the other hand, the CIR counters, in his *Comment*,[58] that:

4. Nonetheless, petitioner failed to exhibit a SEC Certificate of Non-Registration of Company which, ... would have tend to satisfy the requirement that the service-recipient is not engaged in trade or business within the Philippines.

... ... ...

6. As judicially admitted by petitioner, at one point in time, MLIC established a branch locally, [MLIC-PH]. However, on 26 December 2012, MLIC-PH filed an application-letter with the Insurance Commission for authority to close its

[58] *Rollo*, CTA *EB* Case No. 2183, pp. 152 to 155.

Philippine business and withdraw its license. The application was approved by the Insurance Commission ... .

7. Based on the foregoing, it would seem that MLIC-PH still had business in the Philippines during the taxable year 2013. This is bolstered by the fact that MLIC-PH's withdrawal of license was only approved on 7 January 2013. Thus, the alleged dissolution process only started at such time or approximate time.

8. Furthermore, Section 52 of the NIRC of 1997, as amended, provides that a dissolving corporation has to submit with the Securities and Exchange Commission a certificate of tax clearance. ...

9. In addition, Section 134 of the Revised Corporation Code of the Philippines provides that the dissolution of a corporation takes effect only upon the issuance of a certificate of dissolution. ...

10. MLIC failed to secure a SEC Certificate of Non-Registration. This would most probably due to the reason that MLIC-PH was not yet issued a Certificate of Dissolution at such time and it was still considered as doing business in the Philippines.

We find that MDSI failed to raise any new or substantial matter persuasive enough to disturb the Court in Division's findings in the assailed *Decision* and *Resolution*.

The Court in Division correctly ruled in the assailed Decision[59] that to be considered as a non-resident foreign corporation (**"NRFC"**) doing business outside the Philippines, the entity must be supported, ***at the very least***, by **both:** (1) a SEC Certificate of Non-registration of Corporation /Partnership; **and** (2) a Certificate/Article of Foreign Incorporation/Association. Parenthetically, it must be emphasized that notwithstanding the said documents' presentation, there must be *no indication* that the recipient of the services is doing business in the Philippines.

The Court in Division further held that:

The said basic documents are necessary because **the Philippine SEC's negative certification establishes that the recipient of the service has no registered business in the Philippines**; while the said certificate/articles of

[59] Annex "A" of the Petition for Review, *Rollo*, CTA *EB* No. 2183, pp. 19 to 91; Annex "A" of the Petition for Review, *Rollo*, CTA *EB* No. 2191, pp. 31-104.

> incorporation/association will prove that the said recipient of the service is indeed a non-resident foreign entity. Furthermore, the former document will tend to satisfy the requirement that the service-recipient is not engaged in trade or business within the Philippines; while the latter document will indicate whether the same service-recipient is engaged in business at all (*i.e.*, a showing of a continuity of conduct and intention to establish a continuous business). [*Emphasis supplied*]

MDSI reiterated in the instant case its arguments before the Court in Division that the consularized *Letters Patent of Amalgamation* issued by Canadian authorities proves that MLIC is a corporation duly registered and existing under the laws of a foreign jurisdiction; that at one point in time, MLIC established a branch locally, the MLIC-PH; that a view considers the establishment of a branch as grounds to regard MLIC as a resident or doing business in the Philippines; however, zero-rating also applies to sales to another category of service-recipient, " a person engaged in business conducted outside the Philippines;" that as worded, the law does not ask whether the entity resides or is doing business in the Philippines and all that is required is that the entity is "engaged in business conducted outside the Philippines".[60]

In addition, MDSI asserts[61] that:

> 30. The view that enshrines the Certificate *alone* as determinative of the character of the service recipient elevates an evidentiary rule over a substantive rule by essentially requiring a taxpayer to possess a specific kind of evidence – and by fiat excluding all other kinds of evidence otherwise relevant. But rules of procedural [sic] cannot impair substantive rights.

The arguments do not impress.

As correctly found by the Court in Division in the assailed Resolution, the consularized *Letters Patent of Amalgamation* merely proves that MLIC is a foreign corporation. Such does not prove whether MLIC is not doing business in the Philippines, which is another requirement to qualify for zero-rating under Section 108(B)(2) of the NIRC of 1997, as amended.

[60] Annex "B" of the Petition for Review in CTA *EB* No. 2191 (CTA Case No. 9126), Motion for Reconsideration, pars. 6 to 8, pp. 106 to 107; pars. 20 to 22 of the Petition for Review, CTA *EB* No. 2191, p. 15.
[61] Petition for Review, CTA *EB* No. 2191 (CTA Case No. 9126), par. 30, p. 17.

In *Commissioner of Internal Revenue v. Macquarie Offshore Services Pty., Ltd. (Macquarie),*[62] the Supreme Court emphasized that for the sale of services to qualify for zero-rating, it must be established that the recipient of the services is not only a foreign corporation but must also be a non-resident corporation or one that is not engaged in trade or business in the Philippines.

Accordingly, to argue that it is sufficient to prove that a foreign corporation is engaged in business conducted outside the Philippines without proving that the foreign corporation is *not doing business in the Philippines* is flawed.

In *Macquarie*, the Supreme Court underscored that there is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. [63] The evidence *necessary* and *sufficient* shall be judged in every case depending on its own peculiar surrounding circumstances.[64] The Court expounded, to wit:

> **There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business.** We ruled thus in *Commissioner of Internal Revenue v. British Overseas Airways Corporation*:
>
> x x x. There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. Each case must be judged in the light of its peculiar environmental circumstances. The term implies a continuity of commercial dealings and arrangements, and contemplates, to that extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of commercial gain or for the purpose and object of the business organization. **"In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and not one of a temporary character."** [*Emphasis and underscoring supplied, citations omitted*]

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[62] G.R. No. 225169 (Notice), 6 October 2021, citing the cases of *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc., supra, Accenture, Inc. v. Commissioner of Internal Revenue, supra, Sitel Phils. Corp. v. Commissioner of Internal Revenue, supra.*
[63] *Id.*
[64] *Id.*

**Sufficient proof** of these components: showing not only that the clients are foreign corporations but also are not doing business in the Philippines, is required, as explained by the Supreme Court in the case of *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd. (Deutsche)*,[65] to wit:

> For purposes of zero-rating under Section 108(B)(2) of the Code, the claimant must establish the two components of a client's NRFC status, *viz.*:(1) that their client was established under the laws of a country not the Philippines or, simply, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. To be sure, **there must be sufficient proof of *both* of these components: showing not only that the clients are foreign corporations, but also are not doing business in the Philippines.**
>
> **Such proof must be especially required from ROHQs** such as DKS. .... .
>
> ... ... ...
>
> ... To the Court's mind, **the SEC Certifications of Non-Registration show that their affiliates are foreign corporations.** On the other hand, the articles of association/certificates of incorporation stating that these affiliates are registered to operate in their respective home countries, outside the Philippines are *prima facie* evidence that their clients are not engaged in trade or business in the Philippines.
>
> Proof of the above-mentioned second component sets the present case apart from *Accenture, Inc. v. Commissioner of Internal Revenue.* xxx **The absence of any other competent evidence (*e.g.*, articles of association/certificates of incorporation) proving the *second* component** (*i.e.*, that the affiliate is not doing business here in the Philippines) **shall be fatal to a claim** for credit or refund of excess input VAT attributable to zero-rated sales. [*Emphasis supplied*]

Indeed, while the SEC Certificate of Non-Registration serves as evidence that a foreign corporation is not doing business in the Philippines, it should not be taken as the *sole acceptable proof* of such a fact.

[65] G.R. No. 234445, 15 July 2020.

As emphasized in *Deutsche* and *Macquarie* cases, there must be **sufficient proof** of the two components of a client's NRFC status, *viz.*: (1) that their client was established under the laws of a country not the Philippines or, is not a domestic corporation; and (2) that it is not engaged in trade or business in the Philippines. There is no specific criterion as to what constitutes "doing" or "engaging in" or "transacting" business. However, We have consistently held that to be considered as an NRFC doing business outside the Philippines, each entity must be supported, **at the very least,** by both SEC Certificate of Non-Registration of Corporation/Partnership **and** proof of incorporation, association, or registration in a foreign country (i.e., certificate/article of foreign incorporation, association, or registration). [66]

MDSI failed to discharge this burden. It tried to prove that MLIC is no longer doing business in the Philippines by exhibiting MLIC-PH's letter with the Insurance Commission for the authority to close Philippine business and withdraw the license.

This is insufficient.

A SEC Certificate of Non-Registration of Corporation /Partnership establishes that an entity is not doing business in the Philippines. The filing with the Insurance Commission of an application for authority to close business merely evidences that MLIC-PH no longer intends to continue with a specific business in the Philippines. However, this Court cannot simply assume that this intention (1) has been realized by withdrawing its license or (2) includes all aspects of MLIC's business to constitute non-registration. As alleged by the CIR, MLIC's failure to secure the SEC Certificate of Non-Registration was probably because MLIC-PH had not yet been issued a Certificate of Dissolution at that time, and it was still considered as doing business in the Philippines.

Nonetheless, as a rule, in the absence of evidence, this Court cannot make assumptions when other possibilities are equally plausible. MDSI's failure to sufficiently prove that MLIC is not engaged in trade or business in the Philippines is fatal to its claim.

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[66] *Maxima Machineries, Inc. v. Commissioner of Internal Revenue*, CTA *EB* No. 2485 (CTA Case No. 9838), 25 July 2022; *Ibex Philippines, Inc. v. Commissioner of Internal Revenue*, CTA *EB* No. 2533 (CTA Case No. 9802), 10 November 2022; *Macquarie Offshore Services, Pty. Ltd. v. Commissioner of Internal Revenue*, CTA *EB* No. 2431 (CTA Case No. 9722), 25 January 2023.

A taxpayer claiming a tax credit or refund has the burden of proof to establish the factual basis of that claim. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[67]

Given the foregoing, We rule that MDSI's sales to MLIC do not qualify for a zero rating.

**In CTA *EB* No. 2183**

**<u>MDSI has proved that the claimed input VAT was not carried over and applied to subsequent quarters.</u>**

The CIR argues that MDSI failed to overcome the burden that the subject input tax being claimed remained unutilized or has not been applied against any output tax for the current and succeeding quarters. He points to MDSI's failure to present *all* the VAT returns for the taxable year 2015. He contends that it is erroneous for the Court in Division to rule that the input VAT is unutilized based solely on the first quarter VAT return for the taxable year 2015.[68]

We find the CIR's arguments without merit.

As the Court in Division observed in the assailed *Decision*,[69] even if MDSI carried over the claimed input VAT to the succeeding quarters, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the 1st quarter of CY 2015.

We quote with approval the disquisition of the Court in Division on the matter, [70] *viz.*:

> The above-computed excess input VAT amounting to ₱33,737,520.09 is thus attributable to zero-rated sales. Consequently, petitioner's duly substantiated excess input VAT attributable to the declared valid zero-rated sales of ₱83,298,123.56 amounts only to ₱1,305,567.11, computed as follows:

[67] *Commissioner of Internal Revenue v. Macquarie Offshore Services Pty., Ltd.*, G.R. No. 225169, 6 October 2021.
[68] CIR's Petition for Review, p. 4
[69] Annex "A" of the Petition for Review, *Rollo*, CTA *EB* No. 2183, p. 90.
[70] *Id.*

| | | |
|---|---|---|
| Excess input VAT available for refund | | ₱33,737,520.09 |
| Multiply by ratio of valid zero-rated sales over total sales: | | |
| Valid zero-rated sales | ₱83,298,123.56 | |
| Divide by total zero-rated sales per VAT returns | ₱2,152,529,797.47 | 3.87% |
| **Input VAT allowed for refund** | | **₱1,305,567.11** |

> Moreover, **although the claimed input VAT was carried over by petitioner in its succeeding Quarterly VAT Returns, the same remained unutilized until it was deducted as "VAT Refund/TCC Claimed" in its Quarterly VAT Return for the 1st quarter of CY 2015.** Therefore, the subject claim no longer formed part of the excess input VAT of ₱80,430,008.82 as of the end of the 1st quarter of CY 2015 that was to be carried over/applied to the succeeding quarters. As such, it eliminates the possibility that the present claim would be applied to future output VAT liability. [*Emphasis supplied*]

Further, if the CIR finds it relevant to present the VAT Returns for the 2nd to 4th quarters of CY 2015 to refute or disprove MDSI's entitlement to the claimed input tax, he should have presented them himself. After all, he has the filed VAT returns of all taxpayers in his custody.

**An input tax need not be directly and entirely attributable to the zero-rated sales to be refundable or creditable.**

In his *Petition*, the CIR points to the use of the phrase "directly attributable" of Section 112 of the NIRC of 1997, as amended.[71] Accordingly, the CIR posits that the Court in Division erred in concluding that since MDSI's reported sales were allegedly all zero-rated, the claimed input VAT is entirely attributable thereto. The CIR suggests defining the phrase "directly attributable" as "arising from a particular source or cause."[72]

We find the CIR's arguments untenable.

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[71] CIR's Petition for Review, p. 5.
[72] CIR's Petition for Review, p. 6

This issue has been repeatedly raised and has long been settled.

We have consistently held[73] that Section 112 (A) of the NIRC of 1997, as amended, does not require that input taxes be directly attributable to the zero-rated sales of the claimant and only requires that the input taxes be attributable to the zero-rated sales. Nothing in the provision states that the input tax needs to be directly attributable or a factor in the chain of production to the zero-rated sale for it to be creditable or refundable. The aforementioned provision allows as a tax credit an allocable portion of a taxpayer's input tax that is not directly and entirely attributable to the zero-rated sales.[74]

Input taxes, whether directly or indirectly attributable to the claimant's zero-rated sales, may be the subject of a refund under Section 112 (A)[75] of the NIRC of 1997, as amended. Where the law does not distinguish, neither should we.

Section 112 (A) of the NIRC of 1997, as amended, recognizes the situation wherein a claimant's input tax is not directly and entirely attributable to its zero-rated sales by allowing the proportionate allocation of the input taxes based on the total volume of sales.[76]

In another case,[77] We likewise held:

> "The CIR's insistence that "to be creditable, the input tax must come from purchases of goods that form part of the finished product of the taxpayer or it must be directly used in the chain of production" is not entirely consistent with the

[73] *Commissioner of Internal Revenue v. Carmen Copper Corp.*, CTA *EB* Case Nos. 2480 & 2515 (CTA Case No. 10016), 10 January 2023.
[74] *Commissioner of Internal Revenue v. Deutsche Knowledge Services Pte. Ltd*, CTA *EB* Case No. 2082 (CTA Case No. 9496), 21 July 2020.
[75] 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 of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.** Provided, finally, That for a person making sales that are zero-rated under Section 108(B) (6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales."
[76] *Luzon Hydro Corp. v. Commissioner of Internal Revenue*, G.R. No. 188260, 13 November 2013, 721 SCRA 202-217.
[77] *Deutsche Knowledge Services Pte. Ltd. v. Commissioner of Internal Revenue*, CTA *EB* Case Nos. 1917 & 1919 (CTA Case No. 9079), 5 February 2020.

above-quoted Section 110. This is so because the said provision, as clearly stated, did not limit itself to purchases or importation of goods which are to be converted into or intended to form part of a finished product for sale, or to be used in the chain of production; but also includes, inter alia, purchases or importation of goods for use as supplies in the course of business, or for use in trade or business for which deduction for depreciation or amortization is allowed; as well as purchase of services for which VAT has been actually paid.

Accordingly, provided that the subject input tax is evidenced by a VAT invoice or official receipt issued in accordance with Section 113 of the NIRC of 1997, as amended, the same may be creditable against the output VAT.

We likewise do not find merit in the CIR's allegation that for an input tax to be attributable to zero-rated sales, it must be shown that "the connection between the purchases and finished product is 'concrete' and not 'imaginary' or 'remote'."

... ...

Based from the foregoing, creditable input taxes which cannot be directly or entirely attributable to any sale transaction (i.e., zero-rated or effectively zero-rated sale and taxable or exempt sale of goods of properties or services), shall be allocated proportionally on the basis of the volume of sales. Evidently, contrary to the CIR's allegation, the attribution of the input VAT to the zero-rated sales need not always be direct.

Moreover, the word "attribute," the adjective form of which is "attributable," is defined as "to explain as to cause or origin," or simply, to "ascribe." Thus, when Section 112(A) of the NIRC of 1997, as amended, states that the input VAT must be attributable to the zero-rated or effectively zero-rated sales, it simply means that the input VAT must be regarded as being caused by such sales. ... ...

In his Petition, the CIR cites the 2007[78] and 2011[79] cases of *Atlas Consolidated Mining and Development Corp. v. Commissioner of Internal Revenue* (*Atlas* cases).

We find CIR's reliance in these cases misplaced.

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[78] G.R. Nos. 141104 & 148763, 8 June 2007, 551 SCRA 519-567.
[79] G.R. No. 159471, 26 January 2011, 655 SCRA 499-512.

The Supreme Court decided the *Atlas* cases based on Revenue Regulations ("**RR**") No. 5-1987,[80] as amended by RR No. 3-1988.[81] Section 16 of the said regulation provides:

> "In all cases, the amount of refund or tax credit that may be granted shall be limited to the amount of value-added tax (VAT) paid **directly and entirely attributable to the zero-rated transaction** during the period covered by the application for credit or refund." [*Emphasis and underscoring supplied.*]

It bears emphasis that the requirement of direct and entire attribution is no longer reflected in RR No. 16-2005,[82] as amended, which is the applicable regulations in the instant Petitions.

From the foregoing discussion, We find the CIR's contention regarding the requirement of direct attribution without merit.

**WHEREFORE**, in light of the foregoing, the *Petition for Review* filed by the Commissioner of Internal Revenue in CTA *EB* No. 2183, and the *Petition for Review* filed by Manulife Data Services, Inc. in CTA *EB* No. 2191, are **DENIED** for lack of merit.

The *Decision* dated 5 July 2019 and the *Resolution* dated 7 November 2019 in CTA Case No. 9126 are **AFFIRMED.**

**SO ORDERED.**

**LANEE S. CUI-DAVID**
Associate Justice

*WE CONCUR:*

**ROMAN G. DEL ROSARIO**
Presiding Justice

[80] Subject: Value-Added Tax, 1 September 1987.
[81] Subject: Revenue Regulations amending Sections 16 and of Revenue Regulations No. 5-87, 7 April 1988.
[82] Consolidated Value-Added Tax Regulations of 2005, 1 September 2005.

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**ERLINDA P. UY**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

**CATHERINE T. MANAHAN**
Associate Justice

**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

Marian Ivy F. Reyes-Fajardo
**MARIAN IVY F. REYES-FAJARDO**
Associate Justice

**CORAZON G. FERRER-FLORES**
Associate Justice

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## 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 consolidated cases were assigned to the writer of the opinion of the Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice

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