

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

SITEL PHILIPPINES
CORPORATION (Formerly
Clientlogic Philippines, Inc.),
Petitioner,

C.T.A. CASE NO. 7623

Members:

CASTAÑEDA, Chairperson,
UY, and
PALANCA-ENRIQUEZ, JJ.

-versus-

Promulgated:

COMMISSIONER OF INTERNAL
REVENUE,

JUL 23 2010

Respondent.

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AMENDED DECISION

PALANCA-ENRIQUEZ, J.:

This resolves petitioner Sitel Philippines Corporation's "Motion For Partial Reconsideration (of the Decision dated March 3, 2010)" filed on March 23, 2010.

As per Report of the Judicial Records Division dated April 28, 2010, despite notice, respondent Commissioner of Internal Revenue ("CIR") failed to file his comment.

The motion is anchored on the following grounds:



1) the claim for refund of input value-added tax (“VAT”) for the first quarter of 2005 in the total amount of P3,767,206.89 was not barred by prescription;

2) the judicial interpretation laid down in the case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, 512 SCRA 135) (“Burmeister case”) cannot be made to apply in the instant case;

3) granting *arguendo* that the Burmeister case is applicable, petitioner claims that it submitted sufficient evidence to prove its zero-rated sales. In support of its claim, petitioner submitted additional documentary evidence, Certificates of Non-Registration of Company issued by the Securities and Exchange Commission, as Annexes “A” to “D” of its Motion; and

4) it is entitled to refund of input VAT on capital goods whether or not related to zero-rated sales prior to the effectivity of RA 9337 on November 1, 2005.

The motion is partly meritorious.

The first ground that petitioner’s claim for refund for the first quarter of 2005 has not yet prescribed is devoid of merit.



It must be emphasized that in the Mirant Case, promulgated on September 12, 2008, the Supreme Court only applied the law, specifically, *Section 112(A) of the NIRC of 1997, as amended*, which took effect on January 1, 1998. *Section 112(A) of the NIRC of 1997, as amended*, expressly provides that claims for tax credit or refund of creditable input tax due or paid attributable to zero-rated or effectively zero-rated sales must be made, within two (2) years after the close of the taxable quarter when the sales were made.

Petitioner's contention that *Section 112(A) of the NIRC of 1997, as amended*, should be construed in conjunction with *Sections 204(C) and 229 of the same code*, which allows claims for refund to be made within two (2) years after payment of the tax, is bereft of merit. The Supreme Court expressly ruled in the Mirant case that the provisions of *Sections 204(C) and 229 of the NIRC of 1997, as amended*, reckoning the two-year prescriptive period from the date of the payment of the tax or penalty, apply only to instances of erroneous payment or illegal collection of internal revenue taxes. On the other hand, *Section 112 of the NIRC of 1997, as amended*, specifically applies to claims for refund or tax credit of input VAT.

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Considering that the rule regarding the period to file claims for refund or tax credit certificate of input tax, which is “two (2) years after the close of the taxable quarter”, has been effective and existing as early as January 1, 1998, the *Mirant Case*, therefore, did not overturn any existing law. The ruling in the case of *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, 524 SCRA 73, counting the two-year prescriptive period not from the close of the quarter when the zero-rated sales were made, but from the date of filing of the quarterly VAT return and payment of the tax due 20 days thereafter, invoked by petitioner, was an interpretation of the *1977 Tax Code*, and not of the *NIRC of 1997, as amended*.

Petitioner’s contention that new doctrines enunciated by Courts cannot be applied retroactively if it impairs vested rights, is likewise devoid of merit. The ruling in the *Mirant Case*, which held that the two-year period for filing the claim for input VAT refund or tax credit certificate is reckoned from the close of the taxable quarter when the relevant sales pertaining to input VAT were made, has already been enforced as early as January 1, 1998, upon the effectivity of the *NIRC of 1997, as amended*. Settled is the rule that judicial interpretation becomes



part of the law as of the date that law was originally passed since in this case, such construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. Such judicial doctrine does not amount to the passage of a new law, but consists merely of a construction or interpretation of a pre-existing one, and that is precisely the situation obtaining in this case (*Senarillos vs. Hermosisima*, 100 Phil. 501).

Furthermore, the provisions regarding the period to file claims of refund partake of the nature of a procedural rule. Equally settled is the rule that procedural laws may be given retroactive effect. There are no vested rights in rules of procedure. A remedial statute may be made applicable to cases pending at the time of its enactment (*Aris [Phil.], Inc. vs. NLRC*, 200 SCRA 257).

Finally, the right of petitioner to a refund of unutilized input VAT is a mere statutory privilege and not a vested right. It bears emphasis that recovery of excess input VAT is a refund, which is in the nature of an exemption. There is a parity between tax refund and tax exemption, when the former is based either on a tax exemption statute or a tax refund statute. Clearly, a claim for tax refund may be based on statutes granting

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tax exemption or tax refund. In such case, the rule of strict interpretation against the taxpayer is applicable, as the claim for refund partakes of the nature of an exemption, a legislative grace, which cannot be allowed unless granted in the most explicit and categorical language. The taxpayer must show that the legislature intended to exempt him from the tax by words too plain to be mistaken (*CIR vs. Fortune Tobacco Corporation*, 559 SCRA 183).

We likewise find no merit in petitioner's contention that the ruling in the *Burmeister* case cannot be applied in the instant case as the requirement that the recipient of services is doing business outside the Philippines was added only by RA 9337, which took effect only on November 1, 2005.

The *Burmeister* case was promulgated on January 22, 2007, before petitioner filed the instant petition for review with this Court on April 19, 2007. Following petitioner's prior argument on prospective application of judicial decisions, petitioner is bound to observe the ruling in the *Burmeister* case, as the same has already been enforced at the time petitioner filed its claim for refund with this Court. We are aware that RA 9337, incorporated in *Section 108(B)(2) of the NIRC of 1997*, as

amended, the phrase “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”; however, our decision promulgated on March 3, 2010 requiring that the recipient of services is doing business outside the Philippines was based on the Burmeister case, and not on *RA 9337*.

The case of *Commissioner of Internal Revenue vs. Placer Dome Technical Services (Phils.), Inc.*, G.R. No. 164365, June 8, 2007 (“*Placer case*”), reiterating the ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. American Express*, 462 SCRA 197, resolved the issue of what kind of services are covered under *Section 102(b) of the NIRC of 1986, [now Section 108(B)(2) of the NIRC of 1997, as amended]*. Hence, it cannot be said that the Placer case repealed the Burmeister case. Moreover, the Placer case, promulgated on June 8, 2007, was rendered by a Division of the Supreme Court. Pursuant to the Constitutional provision that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*, the Placer case cannot modify the Burmeister case.



As regards petitioner Sitel's contention that it submitted sufficient evidence to prove its zero-rated sales, this issue has already been sufficiently discussed in the decision sought to be reconsidered. The Court cannot also consider the additional evidence presented by petitioner Sitel, as the presentation of the evidence of both parties had long been terminated and a decision had already been rendered by this Court.

Finally, as regards petitioner's claim that it is entitled to a refund of the input VAT attributable to its purchases on capital goods prior to the effectivity of *RA 9337* on November 1, 2005, we find merit in petitioner's contention that it is entitled to a refund of the unprescribed portion of input VAT from April 1, 2005 to October 31, 2005.

While it is provided in *RA 9337* that it took effect on July 1, 2005, its implementation was suspended when the Supreme Court *En Banc* issued a Temporary Restraining Order in the case of *Association of Pilipinas Shell Dealers, Inc., et al., vs. Purisima, G.R. Nos. 168461 and 168463* on July 1, 2005. On July 2, 2005, Commissioner Guillermo L. Parayno, Jr. issued *Revenue Memorandum Circular No. 30-2005*, which states, as follows: "All taxpayers shall be liable for the taxes and the tax

rates they were subject to prior to the effectivity of *RA 9337* on July 1, 2005.” On October 18, 2005, the TRO was lifted. On September 1, 2005 *Revenue Regulations 16-2005*, implementing *RA 9337*, was issued by the BIR, providing for its effectivity on November 1, 2005. Hence, *RA 9337*, was considered effective on November 1, 2005. Thus, we reconsider our ruling in the assailed decision dated March 3, 2010 regarding petitioner’s claim for refund of input VAT attributable to its purchases of capital goods for the months of April to October 2005. Accordingly, we grant the amount P717,255.81, in addition to the original amount granted of P917,812.29, detailed as follows:

Domestic Purchases of Goods Properly Supported by VAT Invoices			
Registered Name of Supplier	Invoice No./Date of Invoice	Exhibit	Amount
JR Appliance Center	1000904 / 05 Oct. 05	Annex “23” of Exhibit “S”	P16,363.64
Northgate Technologies, Inc.	49986 / 30 Aug. 05	Annex “23” of Exhibit “S”	39,575.81
Northgate Technologies, Inc.	56092 / 23 Sept. 05	Annex “23” of Exhibit “S”	25,227.27
Nexus Technologies, Inc.	40570 / 03 Oct. 05	Annex “23” of Exhibit “S”	371,682.22
Nexus Technologies, Inc.	40954 / 28 Oct. 05	Annex “23” of Exhibit “S”	204,056.02
Teledatacom Phils., Inc.	1601 / 29 Sept. 05	Annex “23” of Exhibit “S”	60,350.85
Total			P717,255.81

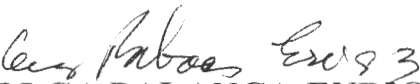


WHEREFORE, premises considered, petitioner Sitel's "Motion for Partial Reconsideration" is hereby **PARTLY GRANTED**. Accordingly, the dispositive portion of our Decision dated March 3, 2010 is hereby amended to read, as follows:

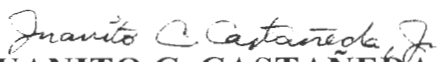
"WHEREFORE, premises considered, the present Petition for Review is hereby **PARTLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner Sitel Philippines Corporation in the reduced amount of ONE MILLION SIX HUNDRED THIRTY FIVE THOUSAND SIXTY EIGHT AND 10/100 PESOS (P1,635,068.10), representing input VAT paid on capital goods purchased for the 2nd quarter of 2005 to October 31, 2005.

SO ORDERED."

SO ORDERED.


OLGA PALANCA-ENRIQUEZ
Associate Justice

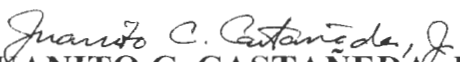
WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ERNESTO D. ACOSTA
Presiding Justice