REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Third Division

MAERSK GLOBAL SERVICES CENTRES (PHILIPPINES) LTD.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9015

Members:

BAUTISTA, *Chairperson,*
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

FEB 14 2018
10:10 a.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For resolution of this Court are the following:

1. petitioner's **Motion for Partial Reconsideration (of Decision promulgated on November 17, 2017)**, filed on December 6, 2017, without respondent's comment per Records Verification Report dated January 5, 2018; and

2. respondent's **Motion for Reconsideration**, filed by registered mail on December 11, 2017 and received by the Court on December 14, 2017, with petitioner's **Comment (To Respondent's Motion for Reconsideration dated December 11, 2017)**, filed on January 15, 2018.

Both motions assail the Decision promulgated on November 17, 2017 (assailed Decision), partially granting the Petition for Review, the dispositive part of which states:

> **WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱13,446,412.82**, representing unutilized excess input VAT attributable to its zero-rated sales for the four quarters of CY 2013.
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> **SO ORDERED.**

In the assailed Decision, the Court denied the VAT zero-rating of petitioner's sales from July to December 2013, or the third and fourth quarters of taxable year 2013, amounting to ₱1,035,992,734.32 (or $23,781,904.16), on the ground that it was supported by official receipts (ORs) without the words "zero-rated sale" printed prominently thereon.

In its motion, petitioner avers that the ORs issued by petitioner for its export sale of services from July to December 2013 bear the pre-printed words "zero-rated sales," and were printed and issued strictly in compliance with the new invoicing requirements and format prescribed under Revenue Regulations (RR) No. 18-2012 and Revenue Memorandum Order (RMO) No. 12-2013.

Petitioner asserts that the change in format of its OR, which started on July 1, 2013, was to comply with respondent's implementation of new invoicing requirements and invoice format under RR No. 18-2012 and RMO No. 12-2013. Petitioner contends that in the sample ORs found in Annexes C.1.1 and C.1.2 of RMO No. 12-2013, which petitioner claims was followed essentially by the accredited printer authorized by respondent to print petitioner's ORs, the words "zero-rated sales" are printed in the same prominence as "VATable sales" and "VAT Exempt sales".

To bolster its contentions, petitioner submits the Judicial Affidavit of Ms. Roda Garcia Tomas purportedly to prove the following: (1) the change in format of the OR was prompted solely by the new invoicing requirements and format under RR No. 18-2012 and RMO No. 12-2013; (2) petitioner's ORs comply with RR No. 18-2012 and RMO No. 12-2013; and (3) the ORs issued by petitioner from July to December 2013 are in the format prescribed by the said rules and reflect the words "zero-rated sales".

Moreover, petitioner avers that assuming that the new invoicing requirements and new OR format prescribed under RR No. 18-2012 and RMO No. 12-2013 are not compliant with Section 113 of the Tax Code, the doctrine of equitable estoppel applies.

Petitioner asserts that RMO No. 12-2013 led it to believe that the invoicing requirements for zero-rated sales in place prior to July 1, 2013 has been superseded by the new invoicing requirement and new OR format under RR No. 18-2012 and RMO No. 12-2013. Petitioner claims that the previous interpretations given to an ambiguous law by respondent are entitled to great weight, and taxpayers who relied on the same should not be prejudiced in their rights.

Respondent, on the other hand, avers in his motion that petitioner's client, A.P. Moller-Maersk A/S (APMM), is doing business in the Philippines and has removed itself from being engaged in international shipping since its vessels ply Philippine ports. Thus, respondent contends that petitioner's transactions with APMM are not zero-rated sales.

In its comment to respondent's motion, petitioner points out that as an entity engaged in international shipping operations, it is understood that APMM's vessels ply international routes and the Philippine ports are only ports of entry and departure of the international vessels. Petitioner clarifies that the phrase "its international shipping *(sic)* ply Philippine ports" means that the international vessels dock and stop at Philippine ports to load and unload cargoes.

Petitioner adds that Philippine laws do not allow foreign vessels to engage in domestic shipping. Hence, it would be illegal for APMM's international shipping vessels to engage in domestic shipping.

Suffice it to state that respondent's motion merely repeats the arguments in his Answer, which the Court has already considered and discussed in the assailed Decision as follows:

> <u>Evidently, petitioner knows and admits that its client, APMM, is actually doing business in the Philippines</u> as petitioner itself stated that "while APMM's international shipping business is primarily conducted outside the Philippines, less than one percent of its shipping business may be considered related to the Philippines because its international vessels ply Philippine ports." Considering that the recipient of petitioner's services is doing business in the Philippines, such sales of services cannot qualify for VAT zero-rating under Section 108 (B) (2) of the Tax Code.
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> However, the Court finds that petitioner may claim refund under Section 108(B)(4) of the Tax Code, which provides:
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> xxx xxx xxx

> Said provision must be read in connection with Section 4.108-5(b)(4) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 4-2007, to wit:
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> xxx xxx xxx
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> To qualify for VAT zero-rating under the said provisions, export services by a VAT-registered person must be rendered in the Philippines to a person engaged in international shipping. No other qualification is required from the recipient of such services, and neither is there any prohibition for it to engage in other trade or business.
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> Petitioner presented before this Court the following documents to prove that APMM is engaged in international shipping operations, to wit:
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> xxx xxx xxx
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> The foregoing documents reveal that APMM is a non-resident foreign corporation engaged in container transportation business worldwide, including transport and receipt of cargoes to and from the Philippines; and that its "main objects are to carry on shipping, chartering and related business, but it shall be a further object to engage in other transport business, commercial and industrial activities at home and abroad within the scope deemed appropriate by the Board of Directors."
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> Thus, petitioner's sales of services to APMM qualify for VAT zero-rating pursuant to Section 108(B)(4) of the Tax Code. *(Citations omitted and underscoring supplied)*

Clearly, respondent did not raise any new ground which warrants a reversal or modification of the assailed Decision.

The Court will now proceed to resolve petitioner's motion.

At the outset, the Court notes that the Judicial Affidavit of Ms. Roda Garcia Tomas and its Annexes "1" to "8" are not formally offered as evidence by petitioner. Section 34 of Rule 132 of the Rules of Court provides:

> SEC. 34. *Offer of evidence.* – The court shall consider no evidence which has not been formally offered. The purposes for which the evidence is offered must be specified.

Hence, the additional evidence presented by petitioner, without being formally offered as evidence, cannot be considered by the Court in deciding the merits of the case.[1]

This Court, however, takes judicial notice of RR No. 18-2012 and RMO No. 12-2013, since these are official acts emanating from the Bureau of Internal Revenue (BIR), which is part of the executive department of the government.[2]

RR No. 18-2012 provides for the regulations in the processing of Authority to Print (ATP) ORs, Sales Invoices (SIs), and Other Commercial Invoices (CIs) using the online ATP system and providing for the additional requirements in the printing thereof. It mandates all persons who are engaged in business to secure from the BIR an Authority to Print principal and supplementary receipts/invoices.

Subsequently, the BIR promulgated RMO No. 12-2013, which prescribes work-around guidelines and procedures in the processing of ATP ORs, SIs and CIs in the interim period until the online ATP system pursuant to RR No. 18-2012 is fully developed.

Both RR No. 18-2012 and RMO No. 12-2013 provide that all unused/unissued principal and supplementary receipts/invoices printed prior to the effectivity date of RR No. 18-2012, or January 19, 2013, shall be valid only until June 30, 2013. Although the deadline was extended by the BIR in several other issuances[3], the requirement of applying for an ATP and a new set of principal and supplementary receipts/invoices was maintained.

Petitioner avers that the change in format of its OR was made to comply with the foregoing BIR rules, and that RMO No. 12-2013 led it to believe that

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[1] *Pilipinas Shell Petroleum Corp. v. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

[2] Section 1 of Rule 129 of the Rules of Court states the instances where judicial notice is mandatory. It provides: "A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions."

[3] Revenue Memorandum Circular (RMC) No. 044-13 extended the validity of all unused/unissued principal and supplementary receipts/invoices printed prior to January 18, 2013 from June 30, 2013 to August 30, 2013. On the other hand, RMC No. 052-13 provides that all principal and supplementary receipts/invoices with ATP dated January 1, 2011 to January 17, 2013 may be used until October 31, 2013 provided that the new ATP was issued on or before August 30, 2013.

prior invoicing requirements for zero-rated sales were superseded by the said RMO.

The Court is not convinced.

Contrary to petitioner's reasoning, RR No. 18-2012 and RMO No. 012-2013 does not do away with the requirement that the term "zero-rated sale" be written or printed prominently on the ORs and SIs. In particular, paragraphs J and M under the section "Policies" of RMO No. 12-2013 suggest that the contents of the ORs and SIs enumerated therein are not exclusive, to wit:

> J. The ORs/Sis/CIs shall be printed showing among others the following (see Annex C for sample receipts/invoices):
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> xxx xxx xxx
>
> M. The sample format of principal and supplementary receipts/invoices (Annex C) contains the basic information required under this Order. Other information, size, and/or format as necessary depending on industry peculiarity and taxpayer needs are hereby allowed, provided that such receipts/invoices are compliant with this Order; xxx (*Underscoring supplied*)

Hence, the fact that petitioner's purpose in changing its OR format was to comply with BIR regulations is irrelevant, as RR No. 18-2012 and RMO No. 12-2013, on the one hand, and Section 113 of the Tax Code, on the other, are not incompatible. Petitioner can follow the guidelines under the said BIR regulations, and still comply with Section 113 of the Tax Code.

In the case *Pilipinas Total Gas, Inc. v. Commissioner of Internal Revenue*[4], the Court elucidated on the intent of the law requiring the term "zero-rated sale" to be printed prominently in the OR and/or SI. We quote the pertinent portion herein:

> The foregoing requirement of imprinting the word "zero-rated" on the face of the invoice was imposed to effectuate the intent of the law. This is to prevent, in instances where invoices or official receipts would be issued without the words "zero-rated" imprinted thereon, the possibility of the purchaser of goods or services in a zero-rated transaction, in being able to claim input tax on such sale to it by the taxpayer of the goods or services, as

[4] CTA EB Case No. 558 (CTA Case No. 7422), July 6, 2010.

> the case may be, notwithstanding the fact that no VAT was actually paid on such goods or services, since the taxpayer is zero-rated. This is the rationale for the mandatory requirement in RR No. 7-95 that the words "zero-rated" be imprinted in the invoice or receipt as the case may be.
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> xxx xxx xxx
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> In view of the foregoing discussion, this Court concludes that there are three reasons why the word "zero-rated" is mandated by law to be imprinted on the VAT invoice/official receipt, to wit: (1) for the buyer or purchaser not to claim any input VAT from such purchase; (2) the purpose of segregating/distinguishing those sales subject to 0% VAT (zero-rated) from those sales that are subject to 10% VAT and from exempt sales; and (3) to enable the BIR to properly implement and enforce the other provisions of the NIRC of 1997 on VAT, namely: (a) Zero-rated sales [Sec. 106 (A) 2 and Sec. 108 (B)]; (b) Exempt transactions [Sec. 109] in relation to Sec. 112 (A); (c) Tax Credits [Sec. 110]; and (d) Refunds or tax credits of input tax [Sec. 112]. *(Underscoring supplied)*

For emphasis, the purpose of requiring the term "zero-rated sale" to be imprinted on VAT ORs and SIs are (1) for the buyer or purchaser not to claim any input VAT from the purchase; (2) for the purpose of segregating zero-rated sales from exempt sales and those subject to 12% VAT; and (3) for the BIR to properly implement and enforce the other provisions of the Tax Code.

Upon closer examination of the subject ORs, the Court further notes that the ORs issued by petitioner to APMM for the period July to December 2013 (Exhibits P-38.7, P-38.8, P-38.9, P-38.10, P-38.11, and P-38.12) indicate the terms "Vatable Sales," "VAT-Exempt Sales," "Zero-Rated Sales," and "VAT Amount." However, the space provided for the amount of each of these items are all left blank, and instead, the amount of the sale is indicated only in the "Total Amount" portion of the OR.

It is evident that these ORs are not compliant with the Tax Code, with the BIR Issuances, or even with the purpose of the law. First, the ORs do not depict that the sale transactions are zero-rated sales. Moreover, since only the total amount is indicated on the OR, the buyer or purchaser would not be able to ascertain whether the transaction is subject to 12% VAT, is exempt, or is zero-rated.

Clearly, the transactions are not properly segregated, and the BIR could not properly implement and enforce the other provisions of the Tax Code.

Therefore, the purpose of the law as laid down in the above-cited case is defeated.

Well-settled in this jurisdiction is the fact that actions for tax refund are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[5]

Without any indication in the ORs that the transactions pertaining thereto are zero-rated, the ORs still failed to substantially comply with the provisions of the Tax Code and the BIR Issuances. Accordingly, the Court finds petitioner's allegation bereft of merit.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration (of Decision promulgated on November 17, 2017)** and respondent's **Motion for Reconsideration** are **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

[5] *Kepco Philippines Corporation vs. Commissioner of Internal Revenue,* G.R. No. 179961, January 31, 2011.