REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

MANULIFE DATA SERVICES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9126

Members:

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

Promulgated:

NOV 07 2019
9:22 a.m.

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RESOLUTION

RINGPIS-LIBAN, J.:

For resolution of the Court are:

1) respondent's **Motion for Partial Reconsideration**, filed on August 9, 2019, with petitioner's **Comment/Opposition (Re: BIR's Motion for Partial Reconsideration dated 07 August 2019)**, filed on September 18, 2019; and

2) petitioner's **Motion for Reconsideration (Re: *Decision* dated 05 July 2019)**, filed on August 14, 2019, without respondent's comment as per Records Verification dated October 14, 2019.

Respondent moves for reconsideration of the Court's Decision (assailed Decision) dated July 05, 2019, partially granting petitioner's Petition for Review. The dispositive portion of the assailed Decision reads:

> "**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 **Php1,305,567.11** representing the petitioner's unutilized input VAT attributable to its zero-rated sales for the four quarters of calendar year 2013.

SO ORDERED."

Respondent maintains that petitioner did not submit complete documents in support of its administrative claim for refund/tax credit pursuant to Section 112(C) of the National Internal Revenue Code ("NIRC") of 1997, as amended, and Revenue Memorandum Circular ("RMC") No. 54-2014. He argues that during the cross-examination of petitioner's witness, Lourdes Rosario Mantaring, she testified that most, if not all, of petitioner's Services Agreement with different companies were not submitted at the administrative level. Moreover, said documents were not available when petitioner filed its judicial claim with the Court. Respondent alleges that considering petitioner's failure to submit the complete supporting documents upon submission of the administrative claim for Value-Added Tax ("VAT") refund, the application for refund or tax credit should be denied.

Respondent further emphasizes that the burden of proving entitlement to a tax refund is on the taxpayer and the law intends the filing of the application for refund to necessarily include the filing of complete supporting documents.

Petitioner opposes respondent's motion, alleging that the Court of Tax Appeals is a court of record, and that all cases before it are tried *de novo*. Hence, the non-submission of documents in the administrative claim will not immediately result in the denial of the judicial claim.

On the other hand, petitioner moves for reconsideration of the Court's exclusion of the zero-rated sales made to Manufacturers Life Insurance Company ("MLIC"), which amounted to Php1,390,561,832.34, in the computation of the proper amount of input VAT. The exclusion of the said zero-rated sales was due to the non-presentation of the Securities and Exchange Commission ("SEC") Certificate of Non-Registration of the Company.

Petitioner argues that while such a SEC Certificate serves as evidence that a foreign corporation is not doing business in the Philippines, it is not the sole acceptable proof. It avers that the consularized charter documents prove that MLIC is a corporation duly registered and existing under the laws of a foreign jurisdiction.

Petitioner further claims that the law does not enquire into whether the entity resides or is doing business in the Philippines. All that is required is that the entity is "engaged in the business conducted outside the Philippines".

Moreover, petitioner asserts that it has proven that MLIC is a nonresident not doing business in the Philippines, when it exhibited an application-letter MLIC-PH filed with the Insurance Commission for authority to close its Philippine business and withdraw its license, which was approved by the said agency, and further corroborated by the testimony of ICPA Constantino, in his Supplemental ICPA Report and Supplemental Judicial Affidavit dated March 14, 2018 that MDSI has no subsequent dealings with MLIC-PH, transacting exclusively with MLIC. Hence, the sales made to MLIC in 2013 should have been properly considered in the computation of the refundable amount of input VAT.

The Court finds the arguments in the instant motions without merit.

Respondent's argument that the application for refund or tax credit should be denied entirely as petitioner failed to submit the complete supporting documents as required under Section 112(C) of the NIRC of 1997 and RMC No. 54-2014, cannot be sustained.

Under RMC No. 54-2014, the application for VAT must be accompanied by complete supporting documents and a statement under oath attesting to the completeness of the submitted documents, *viz*:

> "**The application for VAT refund/tax credit must be accompanied by complete supporting documents** as enumerated in Annex 'A' hereof. In addition, the taxpayer shall **attach a statement under oath attesting to the completeness of the submitted documents** (Annex 'B'). The affidavit shall further state that the said documents are the only documents which the taxpayer will present to support the claim. If the taxpayer is a juridical person, there should be a sworn statement that the officer signing the affidavit (i.e., at the very least, the Chief Financial Officer) has been authorized by the Board of Directors of the company.
>
> Upon submission of the administrative claim and its supporting documents, the claim shall be processed and no other documents shall be accepted/required from the taxpayer in the course of its evaluation. A decision shall be rendered by the Commissioner based only on the documents submitted by the taxpayer. **The application for tax refund/tax credit shall be denied where the taxpayer/claimant failed to submit the complete supporting documents.** For this purpose, the

concerned processing/investigating office shall prepare and issue the corresponding Denial Letter to the taxpayer/claimant."

Considering that the application for refund was filed on March 30, 2015, together with the supporting documents and sworn statement as mandated under RMC No. 54-2014, the respondent has 120 days to grant or deny the application. However, respondent failed to issue a decision within the said period.

In the case of *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue*[1], the Supreme Court held that a distinction must be made between an administrative claim appealed due to inaction and those dismissed due to failure to submit supporting documents, to wit:

> "A distinction must, thus, be made between administrative cases appealed due to inaction and those dismissed at the administrative level due to the failure of the taxpayer to submit supporting documents. **If an administrative claim was dismissed by the CIR due to the taxpayer's failure to submit complete documents despite notice/request, then the judicial claim before the CTA would be dismissible, not for lack of jurisdiction, but for the taxpayer's failure to substantiate the claim at the administrative level. When a judicial claim for refund or tax credit in the CTA is an appeal of an unsuccessful administrative claim, the taxpayer has to convince the CTA that the CIR had no reason to deny its claim.** It, thus, becomes imperative for the taxpayer to show the CTA that not only is he entitled under substantive law to his claim for refund or tax credit, but also that he satisfied all the documentary and evidentiary requirements for an administrative claim. It is, thus, crucial for a taxpayer in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place. Consequently, a taxpayer cannot cure its failure to submit a document requested by the BIR at the administrative level by filing the said document before the CTA.
>
> In the present case, however, Total Gas filed its judicial claim due to the inaction of the BIR. **Considering that the administrative claim was never acted upon; there was no decision for the CTA to review on appeal *per se*. Consequently, the CTA may give credence to all evidence presented by Total Gas, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.** The Total Gas must prove every

[1] G.R. No. 207112, December 8, 2015.

minute aspect of its case by presenting and formally offering its evidence to the CTA, which must necessarily include whatever is required for the successful prosecution of an administrative claim." (*Emphasis and underscoring supplied*)

Considering that the judicial claim was filed based on the inaction of the respondent, respondent is without basis to argue that the petition should be denied on the basis of failure to submit complete supporting documents.

On petitioner's argument on the exclusion of the zero-rated sales of services to MLIC in the computation of the input VAT refund, the Court maintains that the SEC Certificate of Non-Registration is a crucial document to prove that the foreign company is not doing business in the Philippines.

It is worthy to emphasize that the law is clear in stating that to be considered as zero-rated sales of services, the services should be rendered to nonresident foreign corporation not doing trade or business in the Philippines. Section 108(B)(2) of the National Internal Revenue Code (NIRC) of 1997, as amended, provides:

"SEC. 108. **Value-added Tax on Sale of Services and Use or Lease of Properties.** –

xxx xxx xxx

(B) *Transactions Subject to Zero Percent (0%) Rate.* - The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

(2) **Services other than those mentioned in the preceding paragraph 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);" (*Emphasis and underscoring supplied*)

As pronounced by the Supreme Court in the case of *Accenture, Inc. vs. Commissioner of Internal Revenue*[2], the taxpayer must not only prove that the

[2] G.R. No. 190102, July 11, 2012

services is rendered to a foreign corporation but also that said corporation is a nonresident foreign corporation not doing trade or business in the Philippines, to wit:

> "Accenture insists, however, that it was able to establish that it had rendered services to foreign corporations doing business outside the Philippines, unlike in *Burmeister*, which allegedly involved a foreign corporation doing business in the Philippines.
>
> We deny Accenture's Petition for a tax refund.
>
> The evidence presented by Accenture may have established that its clients are foreign. This fact does not automatically mean, however, that these clients were doing business outside the Philippines. After all, the Tax Code itself has provisions for a foreign corporation engaged in business within the Philippines and vice versa, to wit:
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> > SEC. 22. *Definitions* - When used in this Title:
> >
> > xxx xxx xxx
> >
> > (H) The term *'resident foreign corporation'* applies to a foreign corporation engaged in trade or business within the Philippines.
> >
> > (I) The term *'nonresident foreign corporation'* applies to a foreign corporation not engaged in trade or business within the Philippines. (Emphasis in the original)
>
> **Consequently, to come within the purview of Section 108(B)(2), it is not enough that the recipient of the service be proven to be a foreign corporation; rather, it must be specifically proven to be a nonresident foreign corporation.**
>
> 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.
>
> 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.
>
> Accenture failed to discharge this burden. It alleged and presented evidence to prove *only* that its clients were foreign entities. However, as found by both the CTA Division and the CTA *En Banc*, no evidence was presented by Accenture to prove the fact that the foreign clients to whom petitioner rendered its services were clients doing business outside the Philippines.
>
> As ruled by the CTA *En Banc*, the Official Receipts, Intercompany Payment Requests, Billing Statements, Memo Invoices-Receivable, Memo Invoices-Payable, and Bank Statements presented by Accenture merely substantiated the existence of sales, receipt of foreign currency payments, and inward remittance of the proceeds of such sales duly accounted for in accordance with BSP rules, all of these were devoid of any evidence that the clients were doing business outside of the Philippines."

Further, as cited in the assailed Decision, in the case of *Deutsche Knowledge Services, Pte. Ltd. vs. Commissioner of Internal Revenue*[3], this Court has consistently held that in order to be considered as a nonresident foreign corporation doing business outside the Philippines, each entity must be supported, **at the very least**, by **both** a Certificate of Non-registration of Corporation/Partnership issued by the Philippine SEC **and** a Certificate/ Articles of Foreign Incorporation/ Association.

In the instant case, the MLIC's consularized charter documents merely prove that MLIC is foreign corporation while the application-letter MLIC-PH filed with the Insurance Commission for authority to close its Philippine business and withdraw its license, which was approved by the said agency,

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[3] CTA EB No. 1290 (CTA Case No. 7808), August 16, 2016.

signifies MLIC-PH's intention to withdraw its license. However, petitioner failed to specifically prove that MLIC indeed has no trade or business in the Philippines, absent the SEC Certificate of Non-Registration of Corporation/Partnership. Hence, the exclusion of the sales of services to MLIC in the computation of input VAT refund is proper.

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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice